FILED DEC 12, 2014
DOCUMENT NO. 06724-14
FPSC - COMMISSION CLERK

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Fuel and purchased power cost recovery clause and generating performance incentive factor.
_________________________________/

Docket No. 140001-EI
Filed: December 12, 2014

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 as it relates to Issues 1, 2, 3, 6 and 8 affecting Florida Power and Light Company (FPL) in the above-referenced matter. This bifurcated briefing is done consistent with the Chairman's briefing schedule order announced at the conclusion of the evidentiary hearing. (Tr. 1094-1095).

BASIC POSITION AND SUMMARY

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. No thank you! FPL's request to increase its rate base adding hundreds of millions of dollars in natural gas production costs, and to earn a return on those monies, will help FPL annually bolster its rate base. FPL's Petition 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 into the natural gas exploration and production business and the Woodford Project using 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 the Office of Public Counsel pointed out in its Motion to Dismiss for Lack of Subject Matter Jurisdiction, a motion joined by FIPUG, there is no indication that the Florida Legislature contemplated ratepayer dollars being used to fund natural 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 natural gas operations 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.

Florida Power & Light Company (FPL)

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, Inc. 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. Key undisputed facts as detailed in the Argument section of this brief – including, but not limited to a financially suspect and below investment grade operator, PetroQuest, Inc., mountains of hearsay testimony about PetroQuest, but no witness from PetroQuest bothering to show up to address the Commission, no signed operating agreement with PetroQuest presented to the Commission for its consideration -- lead to the inescapable conclusion that FPL's Petition should be denied.

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 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 rates through the fuel clause for natural gas operation and production costs. 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 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.

Discussion of Issue 1

FIPUG respectfully requests that the Commission deny FPL's Petition based a host of proven, and in many cases, uncontroverted facts adduced during the two day evidentiary hearing held on December 1 and December 2, 2014. The key facts that FIPUG argues compels denial of FPL's Petition are succinctly stated as follows:

1. **PetroQuest, Inc. is rated below investment grade and a speculative credit risk according to Standard and Poor's and Moody's credit rating agencies.**

PetroQuest, Inc., the entity that FPL, the Commission and ratepayers will be dependent upon to drill wells, find natural gas and operate natural gas wells, is rated below investment grade and is financially suspect. Tr. 1045. Specifically, PetroQuest is rated as B3/Stable by

Moody's and B/Stable by Standard and Poor's credit rating agencies. Tr. At 1051. According to Moody's, a B rating means PetroQuest's "obligations are considered **speculative** and subject to high credit risk." (emphasis added). Ex. 68. Standard and Poor's describes the financial obligations (short term bonds) of PetroQuest as "vulnerable and has significant **speculative** characteristics ….. faces major ongoing uncertainties which could lead to [PetroQuest's] inadequate capacity to meet its financial commitments." (emphasis added). Ex. 69. The Commission should pay heed to this clear warning issued by the rating agencies.

2. No executed operating agreement between PetroQuest, Inc. and FPL's corporate benefactor, USG Properties Woodford I, LLC, was presented to the Commission.

FPL did not present the Commission with an executed Operating Agreement between PetroQuest, Inc. and USG Properties Woodford I, LLC ("USG"), FPL's corporate benefactor who is holding this deal open for FPL. The binding, executed operating agreement, a key document which details the respective rights and responsibilities of the parties, was never made available to the Commission. Tr. 231, 235. The Commission should not approve a proposal that will cost more than $100 million dollars without having the executed operating agreement before it for review and consideration.

3. The proposed Woodford project may save ratepayers money, but maybe not, particularly when one considers the historical production costs of extracting natural gas in the area compared to natural gas market prices;

The Woodford Project could save customers money. Maybe. Possibly. Depends on natural gas markets, which nobody can accurately predict.

However, the Woodford Project may very well not save the ratepayers money. FPL witnesses hedged repeatedly when asked whether the Woodford project would save ratepayers money. It could, but it might not. Nothing is guaranteed. Nobody knows where and which direction natural gas markets will head in the coming years. The Woodford Project is a bet. Put

simply, this Commission should not use ratepayers' dollars to speculatively wager on the future market price of natural gas.

Tellingly, the average cost of production in the Woodford area has been greater than average natural gas market price for the past four years. Stated differently, using average production costs in the Woodford area compared to natural gas market prices (data provided to FPL by Wood Mackenzie, a reputable company, ratepayers), FPL ratepayers would have lost money every year for the past 4 years. The following chart, in evidence as FPL's response to staff's interrogatory number 75, shows this clearly:

	2010	2011 1H	2011 2H	2012 1H	2012 2H	2013 1H	2013 2H
Woodford Arkoma (Core)	$ 4.75	$ 4.96	$ 4.40	$ 4.11	$ 3.87	$ 4.04	$ 3.89
NYMEX Henry Hub	$ 4.39	$ 4.21	$ 3.87	$ 2.48	$ 3.10	$ 3.71	$ 3.59

4. The Commission has no jurisdiction to oversee natural gas drilling and production activities or companies in Oklahoma, Texas and other states.

Put simply, the ratepayers will be funding operations of companies in other states over whom the Commission has no ability to regulate. Tr. 229. The Commission has no jurisdiction over PetroQuest, Inc. The Commission has no jurisdiction over USG. The Commission has no jurisdiction over natural gas production operations in Oklahoma, or any other state. If and when something goes awry, which will undoubtedly happen, the Commission will not have the ability to investigate the facts and circumstances by asking those directly involved questions or for information.

5. The risks associated with natural gas extraction, operations and production (explosions, blow outs, causation of seismic activity, etc.) are exceedingly high, and ratepayers will ultimately bear responsibility for those risks.

As was pointed out many times during the evidentiary hearing, FPL's proposed venture into the natural gas business in Oklahoma is an unprecedented, unfamiliar and uncertain venture

into uncharted territory for the Commission and FPL ratepayers. To better understand the risks involved, a review of the 2013 PetroQuest annual report is helpful. The annual report, an exhibit to the deposition FPL witness Taylor and in evidence, has 11 pages of detailed risks facing the company. Below are the highlighted risk summaries.[1]

- Oil and natural gas prices are volatile, and an extended decline in the prices of oil and natural gas would likely have a material adverse effect on our financial condition, liquidity, ability to meet our financial obligations and results of operations.
- Our outstanding indebtedness may adversely affect our cash flow and our ability to operate our business, which in turn may limit our ability to remain in compliance with debt covenants and make payments on our debt.
- To service our indebtedness, we will require a significant amount of cash. Our ability to generate cash depends on many factors beyond our control, and any failure to meet our debt obligations could harm our business, financial condition and results of operations.
- Declining general economic, business or industry conditions may have a material adverse effect on our results of operations, liquidity and financial condition.
- We may not be able to obtain adequate financing when the need arises to execute our long-term operating strategy.
- Restrictive debt covenants could limit our growth and our ability to finance our operations, fund our capital needs, respond to changing conditions and engage in other business activities that may be in our best interests.

[1] Each risk warning has additional detail describing the risk; the operating hazard risk provides partial detailed information describing the risks associated with operating natural gas wells.

- Our future success depends upon our ability to find, develop, produce and acquire additional oil and natural gas reserves that are economically recoverable.
- Approximately 40% of our production is exposed to the additional risk of severe weather, including hurricanes and tropical storms, as well as flooding, coastal erosion and sea level rise.
- Losses and liabilities from uninsured or underinsured drilling and operating activities could have a material adverse effect on our financial conditions and operations.
- Lower oil and natural gas prices may cause us to record ceiling test write-downs, which could negatively impact our results of operations.
- Factors beyond our control affect our ability to market oil and natural gas.
- The explosion and sinking of the Deepwater Horizon drilling rig in the Gulf of Mexico in April 2010 and the resulting oil spill may significantly increase our risks, costs and delays.
- We may need to obtain bonds or other surety in order to maintain compliance with applicable regulations, which, if required, could be costly and reduce borrowings available under our bank credit facility or any other credit facilities we may enter into the future.
- Federal and state legislation and regulatory initiatives relating to oil and natural gas development and hydraulic fracturing could result in increased costs and additional operating restrictions or delays.

- The adoption of derivatives legislation by Congress, and implementation of that legislation by federal agencies, could have an adverse impact on our ability to mitigate risks associated with our business.
- Proposed changes to U.S. tax laws, if adopted, could have an adverse effect on our business, financial condition, results of operation and cash flows.
- We face strong competition from larger oil and natural gas companies that may negatively affect our ability to carry on operations.
- SEC rules could limit our ability to book additional proved undeveloped reserves in the future.
- Our actual production, revenues and expenditures related to our reserves are likely to differ from our estimates of proved reserves. We may experience production that is less than estimated and drilling costs that are greater than estimated in our reserve report. These differences may be material.
- We may be unable to successfully identify, execute or effectively integrate future acquisitions, which may negatively affect our results of operations.
- Hedging production may limit potential gains from increases in commodity prices or result in losses.
- The unavailability, high cost or shortages of rigs, equipment, raw materials, supplies or personnel may restrict our operations.
- The loss of key management or technical personnel could adversely affect our ability to operate.
- Operating hazards may adversely affect our ability to conduct business.

Our operations are subject to risks inherent in the oil and natural gas industry, such as:

- unexpected drilling conditions including blowouts, cratering and explosions;
- uncontrollable flows of oil, natural gas or well fluids;
- equipment failures, fires or accidents;
- pollution and other environmental risks; and
- shortages in experienced labor or shortages or delays in the delivery of equipment.
- Environmental compliance costs and environmental liabilities could have a material adverse effect on our financial condition and operations.
- We cannot control the activities on properties we do not operate and we are unable to ensure the proper operation and profitability of these non-operated properties.
- Ownership of working interests and overriding royalty interests in certain of our properties by certain of our officers and directors potentially creates conflicts of interest.

Additionally, seismic activity in Oklahoma has increased, and many suggest that increased seismic activity is linked to the advanced techniques being used to extract natural gas. This is just another risk to be added to the list above.

This risks are significant are material. The risks are disclosed to the public in accordance with Securities and Exchange reporting requirements. The risks should not be minimized or pushed aside, particularly when one considers that FPL has not written due diligence report on PetroQuest, Inc. or the Woodford Project.

6. No written due diligence report was prepared evaluating the risks and benefits of the Woodford Project.

It is common practice when evaluating business opportunities to perform due diligence resulting in a due diligence report which focuses on the opportunity and partners/key players who will be involved in the business venture. This due diligence process and resulting report assists the utility and others analyze the proposed deal and the associated risks. Surprisingly, FPL did not have or use a due diligence report when evaluating the Woodford Project or PetroQuest, Inc. (Tr. 200-201).

7. **FPL suggests that the Woodford reserves are nearly a certainty based on the review of data by third parties. Reserve engineering is a subjective process of estimating underground accumulations of natural gas that are difficult to measure**.

FPL suggests that, based on analysis of data, including production information from other natural gas wells, it is anticipated that the drilled Woodford wells will be productive. FPL failed to tell the Commission that reserve engineering, a process used in estimating future production of an area, is a **subjective** undertaking. See 2013 PetroQuest Annual Report.

8. **FPL assumes virtually no risk with the Woodford project; ratepayers assume inordinate amounts of risk.**

FPL assumes virtually no risk with the Woodford project, including market risk. Tr. 215. FPL finances, with ratepayer money, natural gas operations in Oklahoma. FPL assembles the invoices for the natural gas operations, submits them to the Commission as part of a fuel clause filing, and represents that the expenses incurred by third parties were prudent. FPL then earns a 10.5% return (its return on equity midpoint) on its qualifying capital expenditures: no risk, handsome return. Ratepayers bear risk associated with the natural gas venture while FPL has effectively insulated itself and its shareholders from significant risk.

9. **The Commission should clarify FPL's duties and obligations if the Petition is granted, including clarifying that FPL owes a fiduciary duty to its ratepayers**.

It is clear that the proposed Woodford project will benefit FPL shareholders. It is

uncertain whether FPL's ratepayers will indeed benefit. To ensure that FPL makes decisions that are in the ratepayer's best interest, which FPL says is its intention, the Commission should recognize the special, fiduciary relationship that a utility has with its captive ratepayers in a monopoly relationship. Giving express recognition to the fiduciary relationship, which is supported by the facts of the case, and a concession by FPL witness Ousdahl that a fiduciary relationship exists between FPL and its customers, the Commission should recognize the fiduciary relationship and fiduciary duty that FPL owes its ratepayers. Tr. 837.

10. Where is PetroQuest, Inc.?

No witness from PetroQuest, Inc. appeared before the Commission. In the Woodford Project, PetroQuest, Inc., is the key player; it is the operator of the natural gas venture; it proposes where to sink wells; it must managed loads of financial and operational risk. Before saddling FPL's ratepayers to a company upon whom they will be dependent to extract natural gas, it seems that the Commission and consumer interests would have been well-served to have someone from PetroQuest, Inc. appear before the Commission during the hearing. This did not happened.

FIPUG incorporates and adopts the legal and factual arguments set forth by the Office of Public Counsel regarding whether the Woodford project costs may be recovered through the fuel clause. Such costs should not be recovered through the fuel clause for the reasons set forth by the Office of Public Counsel.

Discussion on Issue 6

The parties to the December 12, 2013 Stipulation and Settlement Agreement (including FPL and FIPUG) 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 rates through the fuel clause, up to $190 million dollars, for natural gas exploration and production costs in Oklahoma related to the Woodford project. 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.

Large capital expenditures for items such as power plants and transmission assets have historically and ordinarily been recovered in base rates. The fuel clause has been historically used to flow through the direct costs of fuel, and closely related attendant costs. The fuel clause has not been used to allow for the recovery of costs that would ordinarily be recovered in base rates. Large capital expenditures expended on things like drilling wells and related equipment would be the type of expenditures that would ordinarily be recovered in base rates.

As FPL witness Taylor testified, the anticipated production costs of the Woodford project are predictable and not expected to vary. Accordingly, since these costs lack the variability that the fuel clause is supposed to protect against, these predictable, stable production costs would ordinarily be recovered in base rates. As such, the settlement agreement contractual language precludes the recovery of such costs through the fuel clause, at least until the term of the current settlement agreement expires.

CONCLUSION "NO THANK YOU"

Based on the reasons set forth above, the Commission should deny FPL's Petition to put FPL ratepayers squarely in the natural gas business in Oklahoma. The consumer interests politely yet forcefully have said, "No thank you" to FPL's self-serving proposal. The Commission should deny FPL's Petition.

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing motion was furnished to the following by Electronic Mail, on this 12th day of December, 2014:

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