

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

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

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Docket No. 150001-EI  
Filed: August 25, 2015

**FLORIDA INDUSTRIAL POWER USERS GROUP'S  
RESPONSE TO STAFF MEMORANDUM AND RECOMMENDATION**

The Florida Industrial Power Users Group (FIPUG), by and through its undersigned counsel, hereby responds to the Memorandum and Recommendation filed by Commission Staff in this docket on August 13, 2015 and states as follows:

1. All actions of the Commission must comply with the due process requirements set forth in the Administrative Procedure Act (“APA”) and Florida Constitution. In addition, the findings of fact on which the Commission’s action is based must be supported by the preponderance of the competent substantial evidence of record, pursuant to section 120.569, 120.57(1), and 120.68, Florida Statutes. Under the APA, all parties to an evidentiary proceeding are entitled to respond, to present evidence and argument, to conduct cross-examination and submit rebuttal evidence, and to submit proposed findings of fact and conclusions of law on all issues.

2. This proceeding is also governed by section 366.06, Florida Statutes. Section 366.06 requires the Commission to determine and fix fair, just, and reasonable rates to be collected by a public utility for its service, and to investigate and determine the actual legitimate costs of the utility. Under section 366.06, the Commission “shall, to the extent practicable, consider the cost of providing service to the class, as well as the rate history, value of service, and experience of the public utility; the consumption and load characteristics of the various classes of customers; and public acceptance of rate structures.” Section 366.06, Fla. Stat.

3. Under the APA, each party, including FIPUG, is entitled to identify issues in dispute and to present evidence, argument, and conduct cross-examination relating to those issues. FIPUG has timely identified the following relevant issues for specific consideration by the Commission (listed as “contested” in Staff’s August 13, 2015 Memorandum):

**ISSUE 3L:** For the year 2014, what was the total net hedging gain or loss associated with FPL’s Woodford hedging activities?

**ISSUE 3M:** Does FPL anticipate reporting a hedging gain or loss for calendar year 2015 related to its Woodford hedging activities, and if so, what is the projected amount of the anticipated hedging gain or loss associated with FPL’s Woodford hedging activities?

Specifically, the two issues identified by FIPUG are relevant to the ultimate issue of the monetary sum the Commission should permit Florida Power & Light (“FPL”) to recover for 2014 and 2015. These issues and the rates sought by FPL for the Woodford hedging activities are part and parcel of the rates that FPL seeks to recover through the present fuel clause proceeding. Moreover, the July 14, 2015 Final Order Approving Modified Gas Reserve Guidelines entered in this very docket obligates FPL to demonstrate that FPL’s customers are receiving the greatest opportunity for fuel savings associated with FPL’s gas reserve projects in part by documenting the gains or losses for each project in order to enable evaluation of the prudence of FPL’s having entered into a gas reserve project and the impact of FPL’s action on the public. (Order No. PSC-15-0284-FOF-EI, p. 15). FIPUG’s two issues set forth above are similarly relevant to the issues raised in this proceeding and to the ultimate issue before the Commission in this proceeding. As a party to this proceeding, FIPUG is entitled to have these issues independently identified and considered by the Commission.

4. It is well-settled law that the finder of fact in an evidentiary proceeding may not refuse to consider relevant issues raised by any party. FIPUG is entitled to present evidence and arguments on the relevant issues identified by FIPUG. *See, Payne v. City of Miami*, 52 So.3d 707, 716 (Fla. 3<sup>rd</sup> DCA 2010) (finder of fact's decision flawed for failure to consider "subelement" relevant to ultimate issue). Staff's suggestion that the Commission may consider the specific issues identified by FIPUG as "subsumed" within other issues is inconsistent with governing law and would create the potential for error, as the Commission is obligated to consider all relevant issues and evidence that a party seeks to present. *See, Payne*, 52 So.3d at 720; *Westland Skating Center v. Gus Machado Buick*, 542 So.2d 959, 964 (Fla. 1989) (evidence of party's compliance with code properly considered as reasonableness of party's conduct, but not to the exclusion of other relevant evidence on the issue); *Welch v. Dececco*, 101 So.3d 421 (Fla. 5<sup>th</sup> DCA 2012) (trial court order reversed, remanded for clarification of whether court considered all relevant evidence).

5. The August 13, 2015 Staff Memorandum argues, over the objections of FIPUG, that the issues identified by FIPUG are "the same as" or "subsumed" within other issues and that "traditionally" such issues are "stricken" or "excluded." (August 13, 2015 Staff Memo, pp. 6-8, with footnotes). Staff's suggestions are no doubt well-intentioned; however, pursuant to governing law, FIPUG is entitled to specifically identify relevant issues for determination by this Commission, and to present evidence and argument, to conduct cross-examination on all relevant issues in this proceeding, including those identified by FIPUG. The relevant issues FIPUG has identified as detailed in staff's Memorandum and Recommendation of August 13, 2015 should be heard and fully considered by this Commission in this docket.

DATED THIS 25<sup>th</sup> day of August 2015.

RESPECTFULLY SUBMITTED,

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**CERTIFICATE OF SERVICE**

**I HEREBY CERTIFY** that a true and correct copy of the foregoing response was furnished to the following by Electronic Mail, on this 25th day of August, 2015:

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