

**BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION**

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

Docket No. 150001-EI

Filed: August 26, 2015

**FLORIDA POWER & LIGHT COMPANY'S RESPONSE  
TO FLORIDA INDUSTRIAL POWER USERS GROUP'S  
"RESPONSE" TO STAFF'S MEMORANDUM AND RECOMMENDATION**

The Florida Industrial Power Users Group's ("FIPUG") Response to Staff's Memorandum and Recommendation is unauthorized and untimely, and it should not be considered at the August 27, 2015 agenda conference. Florida Power & Light Company ("FPL") further states:

On the afternoon of August 25, 2015, FIPUG filed its so-called "response" to Staff's Memorandum and Recommendation on the Office of Public Counsel's ("OPC") Motion To Include Disputed Issues of Material Fact. OPC filed its Motion on July 7, 2015, requesting that three specific disputed issues of fact be included on the issues list in this year's Fuel Clause docket. FPL filed a response on July 14, 2015. Staff filed its recommendation on August 13, 2015. The Staff recommendation addressed OPC's Motion – in particular, whether the three disputed hedging issues should be included – and indicated that the Commission would vote on the Motion at the agenda conference scheduled to take place August 27, 2015.

The Commission should decline to consider FIPUG's response for three reasons.

*First*, there is no provision in either the Commission's rules or the uniform rules of administrative procedure that envisions parties filing responses to a Staff recommendation.

*Second*, FIPUG does not actually "respond" to Staff's recommendation or the arguments set forth in OPC's Motion. Rather, FIPUG presents an "eleventh hour," back-door attempt to raise its own disputed issues, previously rejected by Staff over two months ago on June 23, for inclusion in this year's Fuel Clause docket. FIPUG's "response" is actually an entirely new,

thinly-veiled motion with its own prayer for relief. *See* FIPUG Response at p. 3 (“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.” emphasis added). Pursuant to Rule 28-106.204, Florida Administrative Code, “all requests for relief shall be by motion” and, when time allows, the other parties may, within 7 days . . . file a response.” The Rule further provides that “motions will normally be disposed of after the response period has expired, based on the motion, together with any supporting or opposing memoranda.” Because FIPUG requests specific relief the Commission should treat the “response” as a motion and allow FPL seven days to respond.<sup>1</sup>

*Third*, neither the Commission nor FPL has had proper notice that FIPUG would raise new issues in this docket for the August 27 Agenda Conference. The Commission should not indulge FIPUG’s decision to sit on its hands. The Commission Conference Agenda and Notice properly notified the parties that the Commission will vote on the issues raised in OPC’s Motion. The Commission should consider only those issues.

WHEREFORE, FPL respectfully requests that the Commission decline to consider FIPUG’s “Response” to Staff’s Memorandum and Recommendation.

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<sup>1</sup> There are no compelling time constraints that require a decision on FIPUG’s issues at the August 27 agenda conference. The hearing in this docket is not scheduled to commence until November 2, 2015.

Respectfully submitted this 26th day of August, 2015.

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**CERTIFICATE OF SERVICE**

**Docket No. 150001-EI**

**I HEREBY CERTIFY** that a true and correct copy of the foregoing has been furnished by electronic service on this 26th day of August, 2015 to the following:

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