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**ORIGINAL  
FILE COPY**

April 12, 1990

Ms. Marsha Rule  
101 East Gaines Street  
Florida Public Service Commission  
Tallahassee, Florida 32301-0871

**Re: Docket No. 890148-EI**

Dear Ms. Rule:

As you requested in your April 5, 1990 telephone call to me, I have drafted a summary of FPL's positions on its Motion for Reconsideration and FIPUG's Cross Motion for Reconsideration. Try as I might, I could not meaningfully summarize FPL's position on its own motion with just one page. I trust that this nonetheless meets your needs.

By a copy of this letter, I am providing the other parties to this proceeding, as well as Mr. Tribble, a copy of the summaries being forwarded to you.

Very truly yours,

*Charles A. Guyton*

Charles A. Guyton

cc: All Counsel of Record  
Mr. Steve Tribble

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## SUMMARY OF FPL'S MOTION FOR RECONSIDERATION

FPL raises two challenges to the refund of FPL's oil backout return on equity: (1) it was not properly before the Commission in this case, and (2) it constitutes unlawful retroactive ratemaking. The prospect of a refund of the equity return was never raised until the Staff raised it in their Recommendation after the record was closed: no equity refund was sought in FIPUG's Petition; no equity refund was raised in any issue or party's position in the Prehearing Order; and no suggestion of an equity return refund was made at the hearing. The Commission misapplied FPL's tax savings return on equity stipulations, which specifically excluded the oil backout clause, in reaching its refund decision. No notice was given that this money was at risk; no evidence was taken as to FPL's 1988 and 1989 cost of equity. In response to the argument that there was an oil backout equity allegation in the Petition and an oil backout equity issue in the Prehearing Order, FPL argues that (1) in neither instance was there a suggestion that an equity refund was being sought or considered, (2) FIPUG's Petition sought no equity refund, (3) Staff's position was that the equity return was "inappropriate at this time", and (4) the issue as to equity return was prospective only, and that went into FPL's trial strategy.

The retroactive refund of FPL's oil backout equity return is also unlawful retroactive ratemaking. The equity refund fits none of the narrow exceptions to the prohibition against retroactive ratemaking; there are no extraordinary circumstances, Richter v. Florida Power Corp., 366 So. 2d 798 (Fla. 2d D.C.A. 1979); there

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is no issue of prudence, Gulf Power Co. v. FPSC, 487 So. 2d 1036 (Fla. 1986); and FPL has not consented to a refund of the oil backout equity return. In response to the argument that the Commission was surprised to learn in this case that FPL was using the equity return authorized in FPL's last rate case, FPL states: (1) that practice was adopted by the Commission upon the stipulation of the same parties in FPL's first oil backout recovery proceeding; (2) that policy was consistently followed for seven years in fourteen separate orders; (3) during that time the Commission regularly audited FPL's oil backout clause; and (4) the tax savings return on equity stipulations, agenda conferences and orders clearly excepted the oil backout clause from the operation of those stipulations. In response to the argument that the Commission's jurisdiction over oil backout revenues never ends, FPL maintains (1) even the Richter case recognizes that the Commission "cannot retroactively alter previously entered final rate orders just because hindsight makes a different course of action look preferable", and (2) taken to its logical extreme, this argument would allow the Commission to order not only refunds but also retroactive oil backout revenue increases since the inception of the clause - clearly a untenable result. FPL argues that the oil backout equity return is not subject to true-up, that the only lawful retroactive adjustment to the oil backout clause is the one intended in its design - for the periods subject to true-up. In this case at least two of the three recovery periods for which the equity refund was ordered were already subject to an order setting the final true-up.

### FPL'S RESPONSE TO CROSS MOTION FOR RECONSIDERATION

FPL's response to FIPUG's cross motion is that it fails to satisfy the Commission's standard for reconsideration - it does not present a mistake, oversight or misapprehension of fact or law that would justify changing the original decision. FIPUG's arguments are nothing more than a rehash of arguments raised at trial and properly rejected on the weight of the evidence.

FIPUG's argument that the cost estimates and in-service dates for the Martin units were wrong was fully addressed in the hearing, and the preponderance of the evidence supported FPL, as the Commission properly found. (See FPL's Posthearing Brief at 22-23). FIPUG's argument that the Commission improperly shifted the burden of proof to FIPUG is also wrong. As the Petitioner collaterally attacking prior Commission decisions, FIPUG had the ultimate burden of persuasion; however, it is clear from the Order that the Commission weighed conflicting evidence and simply found FPL's more convincing.

FIPUG's argument regarding the impropriety of recovering UPS capacity payments through the factor was also fully aired at the hearing. The evidence supports continued recovery; continued recovery is not inconsistent with the Oil Backout Rule; and it would be manifestly unfair to FPL to disallow such recovery now since FPL's base rates clearly were not designed to recover UPS costs.