ORIGINAL

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Proposal to Extend Plan for the Recording of Certain Expenses for the Years 1998 and 1999 for Florida Power & Light Company	)	Docket No. 970410-EI

POST-HEARING BRIEF OF AMERISTEEL CORPORATION

I. INTRODUCTION

Pursuant to the Order Establishing Procedure[1] in this docket, a hearing was held on November 25, 1997 with respect to the proposal to direct Florida Power & Light Company ("FPL" or the "utility") to take additional charges to various specified and unspecified accounts as expense during the years 1998 and 1999.[2] FPL did not petition or formally request the added and accelerated expense, but the Company submitted testimony and exhibits at the hearing in support of the proposal. AmeriSteel Corporation ("AmeriSteel") submitted testimony and exhibits demonstrating that the proposal is not in the public interest. The Commission Staff, which actually developed and proposed the Plan, did not offer testimony of any kind but conducted cross-examination. At the conclusion of the hearings, the three Commissioner panel[3] presiding at the hearing authorized the filing of post-hearing briefs on December 8, 1997.

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[1] Order Establishing Procedure, Order No. PSC-97-1035-POC-EI, issued August 28, 1997.

[2] The Commission gave preliminary approval to the Plan in Order No. PSC-97-0499-FOF-EI, issued April 29, 1997.

[3] The panel consisted of Chairman Johnson and Commissioners Deason and Clark.

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II. SUMMARY OF ARGUMENT

The essential issue in this docket is whether the added expense and accelerated amortization Plan proposed in this docket is in the public interest. This requires a balancing of the interests of ratepayers and utility investors. In this case, by any measure, the Plan is unassailably contrary to the public interest.

FPL's current rates are excessive. The Plan imposes direct and significant costs on ratepayers served by FPL in 1998 and 1999 by avoiding reductions of those excessive rates. In fact, Staff has advised the Commission in this docket that action is required to safeguard ratepayers' interests if the Plan is not approved prior to January 1, 1998, *i.e.*, because at that point formal recognition of excess FPL earnings could not be avoided. Stated slightly differently, the Plan allows FPL to avoid rate reductions for two additional years to the detriment of all FPL ratepayers taking service in those two years by imposing an enormously disproportionate cost burden on consumers in 1998 and 1999.

FPL feebly argues in support of the Plan that expenses charged today reduce revenue requirements in the future. While true in the broadest possible sense, overcharging current ratepayers to lower a utility's future revenue requirement is not in the public interest. It creates severe intergenerational inequity by unreasonably and unnecessarily overburdening FPL's current customers with cost responsibilities that should be spread over time under established ratemaking principles and prevailing practice. The asserted benefits cited by FPL would apply to any accelerated cost recovery, even if such cost recovery is unfair and unjustified. Further, FPL cannot press its point beyond a vague assertion of potential future benefits because the company openly acknowledges, indeed boasts, that its major variable cost drivers, O&M expense and capital expenditures, will continue to decline or stay at historically low levels while revenue growth will continue to be robust. This means that there will be no base rate increase of any kind in the forseeable future, which makes the suggested long term benefits to ratepayers of the Plan so distant, remote and speculative as to render them illusory. The opportunity cost to current customers of lost rate reductions, however, is real, immediate and substantial.

On the other hand, the benefits of the Plan to FPL's investors are also immediate and substantial, and FPL is quick to inform investors of those benefits. The added expenses of the Plan, like its predecessor approved in Docket No. 950359-EI,[4] contribute mightily to FPL's sudden development of significant amounts of free cash flow which FPL is devoting exclusively to enhancing shareholder value. Investors also benefit from an additional two years of avoiding a permanent rate reduction for exactly the reasons ratepayers are adversely affected by the Plan.

Further, while the benefits of the Plan to investors are obvious, investors assume no costs in obtaining those benefits. The Plan expenses are tied to revenue growth based on a benchmark (the 1996 base rate revenue forecast) that is so low and outdated that there is no risk that investors will experience earnings below the mid-point of FPL's currently allowed return on equity. The Plan thus will be funded with excess earnings that should otherwise be returned to consumers.

FPL hints that current rate reductions, which it seems to concede are required if the Plan is not approved, could be followed by future rate increases if the Plan's added expenses are not approved, but it offers no evidence in the record of any kind to support this. To the contrary,

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[4] Order No. PSC-96-0461-FOF-EI, issued April 2, 1996.

Staff exhibit 1-C (Exhibit 8, p. 023) shows FPL base rate revenues increasing by an average of $99 million annually while the record shows no appreciable increase in any of FPL's fixed cost components. There is no looming future rate increase, with or without the Plan.[5] The real issue is how long FPL can avoid permanent rate reductions through accounting gimmicks.

Finally, the action proposed in the Plan does not comply with the Commission's established rate accounting for the relevant costs, and, in particular, unwisely stands on its head the Commission's long established policy with respect to nuclear decommissioning costs. The Plan creates an intergenerational nightmare by imposing a cost burden on current customers that is many times their fair share of those costs, and most of those reputed additional costs may turn out to be no more than forecasting errors. Moreover, after all the write-downs and added expenses taken by FPL through the end of 1997 are taken into account, the known costs remaining to be recovered comprise a small fraction of the expense available under the proposed Plan for 1998 and 1999. In short, the Plan entails between $762-$841 million in additional "variable," *i.e.*, revenue growth derived, costs to consumers with no tangible benefit, and a comparable $762-$841 million benefit to investors with no tangible cost or risk. By any relevant measuring stick or balancing of interest, the Plan is contrary to the public interest and there is no rational record basis for concluding otherwise.

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[5] *See also* Docket No. 931231-EI, Order No. PSC-95-0340-FOF-EI, issued March 13, 1995; p. 4.

III. BACKGROUND

In 1995, FPL petitioned the Commission in Docket No. 950359-EI to allow a permanent additional annual amortization of $30 million and, for 1995 and 1996 only, a further additional expense equal to:

> 1) 100% the difference between the company's "low" and its "most likely" base rate revenue forecast for each year; and
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> 2) at least 50% of base rate revenues above the most likely forecast.

FPL sought these added expenses, according to its petition, to reduce its potential for stranded nuclear power plant investment if and when competitive generation markets emerged in Florida. A settlement reached by Staff and FPL permitted the fixed $30 million additional amortization and both components of the revenue growth offset formula but did not address the question of stranded nuclear investment. Instead, the settlement established a prioritized list of expenses to charge with the designated funds that primarily addressed known nuclear and fossil plant depreciation reserve deficiencies and accelerated recovery of two regulatory assets: 1) book/tax timing differences previously flowed through and 2) unamortized losses on reacquired debt. In Order No. PSC-96-0461-FOF-EI, issued April 2, 1996, the Commission approved this Plan for the years 1995, 1996, and 1997.

In 1995 and 1996, FPL took additional charges of $126 million and $160 million, respectively (Exh. 14). Both amounts were well in excess of the minimum expense required under the Plan, and the Company reported regulatory earnings above its target level of 12.0% in any event. As a result of these charges and the added expenses taken in 1997, FPL fully corrected over $235 million in depreciation related reserve deficiencies based on approved depreciation related orders issued by the Commission. (Tr. 46).[6] FPL witness Gower agreed that a reserve deficiency of only $14.5 million remains, and that the latter amount is a result of a subsequent depreciation study approved by the Commission (Tr. 46).

For 1997, FPL interrogatory responses to Staff indicate the utility has moved from correcting depreciation reserve deficiencies to the writedown of regulatory assets. The company projected it will write down all of the $79 million book/tax timing difference shown on Mr. Gower's exhibit[7] and $200 million of unamortized loss on reacquired debt (Tr. 55-56). The latter amount constitutes more than ten times the normal annual amortization of this item. After this write down, by FPL's calculation, there is a balance of approximately $98.5 million in remaining unamortized losses at the beginning of 1998. (Tr. 56-57).

Staff's August 14, 1997 recommendation memorandum to the Commission in this docket stated:

> Very early in 1997, Staff recognized that based on historic and projected data, FPL would exceed the maximum of its authorized return on equity (ROE) in 1998. Staff, on its own initiative, met with the Company, the Office of Public Counsel and all other known interested parties to address this situation.
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> "... Staff believes, absent an extension of the plan, overearnings will exist on a prospective basis. For this reason, some action is necessary to protect ratepayer interests. Staff believes it may be necessary to attach jurisdiction to overearnings effective January 1, 1998 or take some other action to protect ratepayer interests. Since the interim statute is based on historic (sic) earnings, it will not adequately protect against 1998 overearnings." (Emphasis added)

[6] References to the official transcript in this proceeding are shown as ("Tr. __).

[7] Exhibit 13, p. 3.

Since the known depreciation reserve deficiencies were corrected and FPL expected to write-off most of the identified regulatory assets in 1997, the Plan Staff devised for 1998 and 1999 required extensive modifications from the Plan approved in Docket No. 950359-EI. Staff addressed excess earnings primarily by using the 1996 base rate revenue forecast as the benchmark for revenue growth to be expensed, and correction of fossil dismantlement and nuclear decommissioning theoretical reserve deficiencies were added to the revamped Plan as prioritized accounts to be recovered. Any added expense not assigned to a targeted account would be booked to a unspecified depreciation reserve.

An FPL write-off summary analysis AmeriSteel obtained from Staff and shown on Exhibit 14 indicates that FPL's revenue growth will produce $841 million in revenues expected to be available to be taken as expense under the Plan, *i.e.*, projected base rate revenues above the 1996 "low case" revenue forecast. FPL also will continue to take the $30 million of "fixed" added expense authorized in the prior docket. This estimate of available added expense is extracted from a base rate revenue projection performed by FPL.[8]

IV. ARGUMENT

A. The Plan is Flawed in Concept

Any assessment of the merits of the proposed Plan begins with an examination of its relative costs and benefits. As discussed below and in the testimony of AmeriSteel witnesses Cicchetti and DeWard, the Plan unnecessarily imposes huge cost burdens on customers served by

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[8] Staff offered a revised expense estimate at the hearing that would reduce the expected available expense level to $762 million. The original estimate is supported by other information supplied by FPL (Tr.). Under either Staff's original or revised estimates, the Plan authorizes FPL to take charges that may be $100 million higher than the minimum level.

FPL in 1998 and 1999. There is no demonstrated need for FPL to take additional expense, the Plan's revenue set aside formula produces a level of added expense that exceeds by several orders of magnitude these customers' fair share of the identified costs to be recovered. The inclusion of perceived deficiencies in the reserves for nuclear decommissioning and fossil dismantlement is fundamentally unsound. Finally, there is no evidence in the record to show that consumers will ever receive any tangible benefit that comes close to the costs the Plan forces them to bear.

1. Ratepayers are adversely affected by the Plan but receive no meaningful benefit.

Staff correctly recognized in its earlier memoranda to the Commission in this docket that FPL's argument that ratepayers are not actually affected by the Plan unless rates are increased lacks any merit. Each dollar FPL collects from retail sales of electricity directly and substantially affects the customers paying those bills. The rates FPL charges for that service cannot be unreasonable or excessive, and the Commission is both empowered and duty bound to reduce those excessive rates to a reasonable level. § 366.07, Fla. Stat. (1995). The principal guide to the reasonableness of current rates and charges is the earned returns achieved and forecasted for FPL. Every dollar of expense incurred, or avoided, and not passed through to customers through an adjustment clause, affects FPL's net income and achieved return on equity.

The revenue set aside formula proposed in the Plan authorizes FPL to take as added expense all of its base rate revenue growth above the company's 1996 forecast (which FPL significantly exceeded in 1996). An FPL "write off activity summary" indicates that the Plan would make available to FPL $361.2 million of added expense in 1998 and $480 million in

1999.[9] Thus, the Plan is expected to authorize a total of $841.2 million of additional expense over the two year period. There is virtually no risk to investors that FPL will not exceed the 1996 "most likely" forecast in 1998 and 1999. FPL's revenues have grown to such an extent that the first component of the Plan's revenue offset formula – the $83.2 million difference between FPL's "low" and "most likely" forecasts is considered to be a "fixed" amount.

(Tr. 119).

In prior cases where the Commission has approved special amortizations or accelerated recovery of costs outside a general rate case, it has routinely assessed the effect of the added charges on the utility's earnings, usually in the context of determining the appropriate amortization period.[10] In this case, the PAA makes no effort to address the effect of the Plan on FPL earnings because the revenue growth offset approach ensures that only earnings near or above the top of FPL's authorized range are affected.[11] The company's most recent (September 1997) earnings surveillance report shows regulated earnings of 12.5% through September 30, 1997. Since the expense assigned to this Plan is derived exclusively from base rate revenue growth, there is every reason to expect achieved returns in 1998 and 1999 to fall in or near this same narrow range if the Plan is approved.

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[9] Exhibit 14.

[10] *E.g.*, Docket No. 931231-EI, Order No. PSC-95-0340-FOF-EI, issued March 13, 1995, (Florida Power & Light) (Commission authorized a five year amortization of $111 million deferred for Martin Reservoir and Turkey Point Steam generator repairs because "an immediate write-off would reduce FPL's return on Equity by over 2.00%". Order p. 4; Docket No. 950270-EI, Order No. PSC-95-1230-FOF-EI, issued October 3, 1995, (FPC - Lake Tarpon - Kathleen Transmission Line); Exhibit 6).

[11] *See* FPL 10-K for 1996.

FPL's witness agreed that the roughly $350 million in added expense that could be taken in 1998 under the Plan equates to a 500 basis point (5%) effect on FPL profits. (Tr. 98-100). This effect on earnings works only one way (*i.e.*, above the midpoint of FPL's authorized return) because the expenses are not taken unless the revenue growth occurs, and, as noted earlier, FPL is virtually assured of 1998 base revenue in excess of that 1996 "most likely" forecast. Consequently, if FPL would show an achieved return of 12% or higher as it has in the past when the added expenses were taken, FPL would show regulated earnings as high as 17% if this Plan is not approved. By any reasonable measure an earnings level this high is excessive for a regulated electric utility. The Plan thus serves to prevent rate reductions that otherwise should occur to correct this situation. This, of course, is the Plan's basic intent, as Staff stated in its above quoted August 14 memorandum to the Commission.

It also should be clear that the one time charges taken under the Plan do not address the underlying change in circumstances that have created an excess earnings situation. Staff Exhibit 8 identifies roughly $99 million in average annual increases in FPL's base rate revenues, but the record fails to show expected increases in any of FPL's major cost drivers from recent historic levels. Hence, the adverse impact of the plan and the magnitude of disguised overearnings will increase each year. There is no looming base rate increase whether or not the Plan is approved. The Plan simply addresses how long a permanent rate reduction can be avoided through accounting gimmicks. If the Plan is approved, the excess earnings will be significantly worse upon its expiration, unless, of course, other accelerated or special write-offs are created. Following this path, no semblance of fairness to ratepayers can be maintained. The Commission should recognize in this docket the basic error of allowing FPL to create expenses to offset its revenue growth where no demonstrated need exists, and especially where the claimed costs to be recovered will be re-estimated many times before actual outlays are ever incurred, if at all.

Exhibits introduced by Staff at the hearing suggested a somewhat lower level of revenue growth related expense than the estimate Staff supplied to AmeriSteel and shown on Exhibit 14 (*see* Exh. 8, p. 023). Using a different revenue growth rate, as Staff suggests, however, while continuing to use the outdated 1996 revenue forecast does nothing to alter the fundamental unfairness of the Plan. Even under Staff's revised numbers, FPL would be authorized to take roughly $762 million in sales related added expense over the two year period.[12] FPL's regulatory earnings still would be several hundred basis points above the top of FPL's currently authorized ROE range without these charges, which is itself unreasonably high compared to current market conditions. Under either estimate of available expense, the Plan would provide FPL with a huge expense cushion that would permit it to manipulate its regulatory earnings.

In composite Exhibit 7, p. 001, Staff referenced the minimum expense levels that FPL must take under the Plan, but the relevant issue is the level of added expense that the Commission authorizes FPL to charge. This was vividly illustrated by FPL witness Gower's disclosure that he learned the day of the hearing that FPL intended to take the minimum level of charges in 1997 notwithstanding a recent written FPL interrogatory response stating that the utility would take added expenses roughly $80 million higher than the minimum for that year (Tr. 415-416). The point noted by Commissioner Deason is that the Plan empowers FPL to change its mind again tomorrow and increase the level of expense under the Plan. (Tr. 121). Or,

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[12] This amount is in addition to the fixed amount of $30 million annually authorized in the prior docket

as AmeriSteel witness Cicchetti points out, FPL could instead spend $80 million on imprudent or excessive expenses that might never be allowed if subject to scrutiny in a rate case. (Tr. 264)

B. There is No Demonstrated Need for the Plan

1. Plan is not comparable to other special amortizations authorized by the Commission

Neither FPL, nor Staff have attempted to advocate the necessity for the Plan in the first place. The record is devoid of any petition or request claiming such a need or attempting to describe why such a plan should be considered to be in the public interest. During the hearing held on November 25, neither ostensible proponent of the Plan attempted any showing of need or provided specifics to address the fundamental question of whether FPL's customers, present and future, would be better served by receiving rate reductions that clearly would be necessary if the Plan were not approved. On this basis alone, the Plan should be summarily rejected. Moreover, AmeriSteel has demonstrated that there is no need for the Plan to be adopted and no reasonable justification for going forward with the Plan described in the PAA

The Commission has in certain circumstances permitted accelerated amortization of specific known and verified costs. For example, FPL's Turkey Point steam generator repair costs had been deferred for several years due to litigation.[13] FPL's asbestos abatement costs applied to plants no longer in service,[14] and FPC's proposed transmission line from Lake Tarpon to Kathleen was not built.[15] In each case, the Commission found specific

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[13] Order No. PSC-95-0340-FOF-EI, issued March 13, 1995, pp. 2-3.

[14] *Id.* at p. 1.

[15] Docket No. 950270-EI, Order No. PSC-95-1230-FOF-EI, issued October 3, 1995, p. 2.

reasons for amortizing those costs quickly. (See Tr. 93). Here, no compelling reason exists. FPL simply will have excess earnings without the added expense.

FPL witness Gower agreed that there needs to be a clear link between the amounts available for expense and the costs that need to be recovered. (Tr. 43-45). As discussed below, the depreciation reserve deficiencies previously identified have been fully corrected. The regulatory assets identified either will be largely written off by the end of 1997, or FPL will have had the opportunity to write them down. There are no significant amounts of known and verified costs to address. While it is possible that new depreciation reserve deficiencies and surpluses may be identified in pending or future dockets, that possibility alone does not justify keeping rates at artificially and unjustifiably high levels by withholding hundreds of millions of dollars of excess earnings.

2. Theoretical nuclear decommissioning reserve deficiencies to the Plan is unsound regulatory policy that is contrary to public interest.

At first, decommissioning costs were reflected in a utility's cost of service through a negative salvage value. In Order 12356,[16] the Commission determined that this method was insufficient and directed the state's nuclear plant owners, FPL and Florida Power Corporation, to establish funded reserves. For each unit, annual accruals of equal amounts were to be developed to ensure an adequate level in the reserves by the time the units were to be decommissioned. Also, the Commission directed the utilities to file comprehensive decommissioning at least every five years to allow it to determine if the annual accruals should be adjusted. In 1995, after reviewing FPL's last comprehensive studies, the Commission increased FPL's annual accrual

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[16] Docket No. 810100-EU, Order No. 12356, issued October 17, 1983.

from \$38 million to \$85 million.[17] The Commission determined that the revised annual accruals were the appropriate "...amounts necessary to recover future decommissioning costs over the remaining life of each nuclear power plant."[18] No party in this docket has argued that the Commission's determination in that 1995 order was insufficient.

In an effort to justify continuing the Plan to avoid excess earnings for two more years, the Plan proposed in this docket seeks to correct perceived deficiencies in the reserves for fossil dismantlement and nuclear decommissioning. This represents a dramatic, fundamentally unsound and unexplained departure from well established Commission policy. These items involve annual accruals to reserves designed to cover expenses that actually will be incurred fifteen, twenty or more years from now. Because such long range estimates of future costs are inherently inaccurate and because substantial regulatory, technological and other factors may materially alter these estimates,[19] the Commission's long established policy correctly requires periodic updating of those studies and adjustments as appropriate to the annual accruals to assure full recovery over the remaining lives of the assets. The Commission should take no further action with respect to the nuclear decommissioning reserve until it considers the new comprehensive studies FPL is required to file next year.

The perceived theoretical deficiency of \$484 million asserted to exist in this docket simply restates the Commission's finding in 1995 that the prior annual accruals were not sufficient to recover the future cost of decommissioning based on the latest studies. The Plan abandons established Commission policy to recover any prior reserve short fall through

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[17] Docket No. 941350-EI, Order No. PSC-95-1531-FOF-EI, issued December 12, 1995.

[18] *Id.* at p. 15.

[19] *See* Tr. 75-78; 81.

subsequent annual accruals, although the revised annual accrual set in 1995 will do exactly that, and imposes the full cost of projected prior years' under-recoveries on FPL customers served in 1998 and 1999. The Plan also contains no provision for removing the effect of that calculated deficiency from the current $85 million annual accrual (Tr. 91). As a result, FPL customers in 1998 and 1999 would pay roughly six times their fair share of currently projected future decommissioning costs through a one-time charge, and they would continue to be billed an annual accrual that includes a portion of that back billed amount.

Mr. Gower acknowledged that customers would be double charged for the claimed deficiency until new studies were filed in 1998 and the Commission determined an appropriate new annual accrual (Tr. 90-91). Staff introduced an FPL interrogatory response at the hearing (composite Exh. 7, p. 014) that purports to recalculate the accrual, but Mr. Gower explained that he had not reviewed the calculation and "was not in a position to say if the new numbers were correct." (Tr. 126).

AmeriSteel also notes that Staff has used a retrospective method in calculating its perceived reserve deficiencies for fossil dismantlement and nuclear decommissioning. However, as noted in Accounting for Public Utilities, prepared by Deloitte and Touche and cited by Staff in another context as Exhibit 19: "The retrospective procedure is generally reserved for use when remaining life cannot be estimated."[20] This circumstance plainly does not apply to nuclear decommissioning reserve studies where each units' 40 year NRC issued operating license defines its useful life.

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[20] Hahne, Robert, and Gregory Aliff, *Accounting for Public Utilities*, Release No. 14, November 1997, sec. 6.09, p. 6-45.1.

More important, unless the Commission has determined that the 1995 decommissioning studies were perfect and no inputs to those studies will change in the future – a perspective all parties freely acknowledge to be preposterous – it is arbitrary and fundamentally unfair to charge customers in 1998 and 1999 for that difference. It is impossible, due to retroactive ratemaking prohibitions and other obvious considerations, to back-bill customers served by FPL in prior years, simply because the latest decommissioning estimates differ materially from expectations in the mid-1970's and mid-1980's. It is equally unsound ratemaking, even if not prohibited by law, to charge a particular set of customers the full amount of a perceived deficiency based on a 1995 estimate that will be obsolete when the next comprehensive studies required by the Commission are filed next year. And, even if some "catch up" on the decommissioning reserve were warranted based on evidence that does not appear in this record, there is no basis for imposing that full burden on customers served in 1998 and 1999. Under the Plan, customers in 1998 and 1999 bear a hugely disproportionate share of decommissioning costs (in addition to the double count), carry all of the risk that the 1995 estimates will change materially in the future, and have no opportunity to be reimbursed if subsequent studies show that perceived deficiency was overstated.

The danger and unfairness of imposing all the risk of forecasting errors on customers in those two years should be apparent to the Commission. State commissions were forced by FERC's rules implementing PURPA[21] to develop long run avoided cost estimates that qualifying non-utility generators could rely upon in mandated purchase power agreements. For a number of

[21] 18 C.F.R. part 292.304(d)(2).

years, pessimistic fuel price forecasts produced very high avoided cost estimates, and, by extension, uneconomically high purchased power prices. Those "locked in" prices have become the bane of utilities, such as FPL, that have significant levels of qualifying non-utility power they must purchase. FPL is among the utilities that have been forced to incur substantial costs to buy down or buyout these uneconomic arrangements, and FPL's customers are footing that bill.

The Plan puts FPL's customers served in 1998 and 1999 in precisely the same predicament, and there is no way to rectify the error as changing circumstances and future studies reveal the magnitude the inaccuracy of the $484 million theoretical reserve deficiency claimed in this Plan. Future annual accruals, of course, could be adjusted to correct a perceived overfunding of the reserve, but the Plan does not begin to address the intergenerational equity problems that it creates or even the necessary adjustment to the current accrual of $85 million if $484 million is added to the reserve under the Plan. Current customers will thus be overcharged in the annual accrual in addition to paying several multiples of their fair share of future decommissioning costs. The parties and presiding Commissioners all recognized that the reserve deficiency calculation is a single snapshot estimate of decommissioning costs that will not hold up for twenty years while technology and the entire electric industry changes around it. It is hard to picture an arrangement more unfair to current customers.

The only logic offered in support of this element of the Plan is that future annual accruals for decommissioning will be lower, presumably after review of the next comprehensive studies, once the perceived past deficiencies are removed. Assuming the Commission were prepared to take the speculative heroic leap that future estimates will never show the need for a lower annual accrual, FPL did not offer any evidence to indicate what effect current collection of $484 million would have on the current annual accrual. FPL witness Gower acknowledged that those calculations simply had not been done, and,, as noted above, Staff solicited an estimate from FPL in a written interrogatory, but neither FPL nor Staff could verify or support that estimate.

The Commission's established policy of developing and revising annual accruals of equal amounts to recover the projected future cost of decommissioning over the remaining life of the asset is a logical, well reasoned approach; particularly when combined with the requirement that those estimates should be revisited periodically.[22] This policy certainly anticipated that decommissioning estimates, and annual accruals, would change. As a result,, customers served over the life of each nuclear unit will not be charged exactly the same amount because there is no way of anticipating all future developments and changes in estimates. (Tr. 81). Adjustment to the annual accrual, when needed, however, assures FPL of full funding of the reserve by the time decommissioning begins and reasonably distributes that cost over the life of each unit based on the best estimates available along the way. The proposed Plan stands this sensible policy on its head and arbitrarily hammers ratepayers served by FPL over just two of the units' 40 year license lives.

C. No Further Accelerated Write-Off Of Unamortized Loss On Reacquired Debt is Justified

FPL proposes to accelerate the write-off of $292 million of unamortized losses on reacquired debt under the Plan. Of this amount, FPL projected that $200 million would be written off in 1997 as permitted by Order No. PSC-96-0461-FOF-EI. leaving a remaining balance

[22] Docket No. 810100-EU, Order No. 12356, issued October 12, 1983.

for 1998 of $98 million after adding in additional reacquisition costs incurred in that year. (Tr. 56-57). (*See* Attachment A to this brief).

FPL has been amortizing these refinancing and debt extinguishment costs since it gained Commission approval for that accounting in 1983.[23] At the time, the Commission noted that amortizing these costs was sound regulatory policy and was consistent with the directives of the Uniform System of Accounts.[24]

In 1996, the annual amortized amount was roughly $20 million. (Tr. 57). Consequently, if FPL takes the write-offs in 1997 projected in its interrogatory response to Staff,[25] normal amortization at the current levels would reduce the unamortized loss remaining balance to only $58 million. (Tr. _____).

There simply is no need for further accelerated write-offs of this remaining cost, and certainly no reason to set aside $762-$841 million of additional expense to cover that cost. There is no question that accelerated write-offs of the unamortized loss on reacquired debt level "is not in compliance with the general requirements of the Uniform System of Accounts" (*see* letter by K.M. Davis, FPL Vice President and Controller; Exh. 2). FPL concedes that "The Uniform System of Accounts requires the unamortized loss on reacquired debt to be amortized in

[23] *See* Exhibit 3 (Order No. 12717, issued December 1, 1983).

[24] *See* also Order No. 13847 in Docket No. 84035, issued November 11, 1994.

[25] Mr. Gower stated during cross examination that he had learned only that day that FPL planned to take the minimum required "variable" charge for 1997 ($162 million) (Tr. 416). Since revenues would be available for additional write downs nonetheless, FPL's abrupt change demonstrates it's ability to use the Plan to manipulate earnings. Or, the company can simply change its mind again and take the write-offs it forecasted in the first place

accordance with General Instruction 17" (Exh. 2 p. 3).[26] That instruction provides, in pertinent part:

> Reacquisition, without refunding
>
> The utility shall amortize the recorded amounts equally on a monthly basis over the remaining life of the respective security issues (old original debt). The amounts so amortized shall be charged to account 428.1, Amortization of Loss on Reacquired Debt.

Because the write-off is not in compliance with those requirements, FPL cannot book the write-offs to the designated account, but must create a unique regulatory asset subaccount (Exh. 2 p. 4). Further, FPL admits that for Uniform System of Accounts purposes in its filings at FERC, "FPL's amortization of its loss on reacquired debt will continue <u>as though there was no write-off pursuant to this docket</u>." (Exh. 2, p. 4). Finally, as soon as the current balance is written off, FPL intends to amortize future debt reacquisition losses, (K.M. Davis; Exh. 2 p. 5) and follow the Uniform System of Accounts.

In short, while the Commission possesses the jurisdiction to "do what it wants" with respect to FPL's unamortized losses on reacquired debt, there can be no argument that the write-off contemplated by the Plan does not comply with the Uniform System of Accounts directives or the established Commission practice following those directives. Thus, the pertinent question is not what proper regulatory accounting practice requires (amortization) or what established Commission practice requires (amortization) but what need or reason is there to depart from proper practice?

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[26] (Quoted in Exhibit 2, p. 4).

The central reasoning put forth for the Plan (correcting historic reserve deficiencies) is not applicable to accelerated recovery of a regulatory asset such as this. The rationale offered by FPL witness Gower (the asserted adverse effect of "long term amortization periods) seems almost trivial when the small remaining balance after the 1997 write-offs could be recovered in a few more years at the present amortization levels. Thus, the apparent answer is supplied by Staff's August 14 memorandum: the write-off helps prevent FPL from reporting excess earnings. Without a demonstrated need, that rationale alone is not in the public interest. The testimony of AmeriSteel witnesses Cicchetti and DeWard demonstrate that, given the write-offs that have already occurred, there is no demonstrated need for further write-offs, particularly as FPL has indicated its intent to return to amortization of such losses anyway.

D. The Plan Should Not Include Correction Of A Perceived Deficiency In Fossil Dismantlement Reserves

The Plan provides for additional charges of $34.4 million to correct a perceived deficiency in the reserves for fossil dismantlement (Exh. 1, p. 2). According to FPL's Ten Year Site Plan, the company has no plans to dismantle any of its existing fossil units during that period.[27] However, many utilities are beginning to sell fossil generating stations as part of restructuring plans, to mitigate stranded costs, or for other business reasons. Recently announced sales indicate that fossil units are fetching prices at a substantial premium above current book value.

For example, the fossil, hydro and purchase power assets of New England Electric System, discussed by AmeriSteel witness Cicchetti and Mr. Gower, are being sold at a price per KW of capacity that is well above the average book value of FPL's fossil units. (Tr. 262). Also, on November 25, 1997, the day of the hearing in this docket, Southern California Edison announced the sale of its fossil-fired generation plants for a purchase price 2.5 times their book value.[28]

Asset sales conducted pursuant to auctions such as those noted above yield a purchase price representing fair market value and are not predicated on the sunk costs of the assets. Buyers consider many factors in formulating their bids, but as long as the purchase price exceeds an asset's book value, the utility does not incur any cost penalty for any downstream liabilities it is shifting to the buyer, including ultimate dismantlement costs.

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[27] 1996 FPL Ten Year Site Plan, Table Re: Existing Generation Facilities).

[28] *The Energy Daily*, November 25, 1997.

If FPL were to sell any of its fossil units and receive, as seems likely, at least book value for them, the amounts accumulated in the fossil dismantlement reserve become surplus, because FPL will never make any cash outlays to dismantle those assets. AmeriSteel's point in this docket that customers in 1998 and 1999 are being unnecessarily charged dismantlement costs far in excess of their fair share of the expected cost becomes obvious. Given the wide publicity afforded the announced asset sales, and the plans of other utilities to conduct similar auctions, the severe intergenerational inequity of this aspect of the Plan could hardly be more obvious. The Commission is certainly mindful of generation asset divestiture elsewhere and must recognize that it is totally unreasonable to include added charges for fossil dismantlement in the Plan.

E. The Commission Should Consider Offsetting Reserve Surpluses and Deficiencies Before Charging Customers Additional Expense

AmeriSteel maintains that the Commission should consider offsetting reserve surpluses and deficiencies in related plant accounts. (Tr. 272-273). FPL witness Gower disputed this approach, citing FERC's rejection of a South Carolina Electric and Gas proposal, which was approved by the South Carolina PSC, to transfer transmission reserve balances to generation to mitigate generation-related stranded costs.[29] In that case, however, FERC objected to a reserve transfer that was not revenue neutral for wholesale customers. At the retail level in Florida the Commission has directed reserve surplus transfers when appropriate.[30] The Commission should consider appropriate transfers of surpluses in this circumstance as well.

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[29] *South Carolina Electric & Gas*, Docket No. 76, FERC 61,338 (1996).

[30] *E.g.*, Docket No. 931231-EI, Order No. 94-1199-FOF-EI, issued September 30, 1994, p. 4 (FPL depreciation rates).

F. The Commission should reject the Plan's proposal to "park" excess profits in an unspecified depreciation reserve.

Once the known costs to be recovered are updated, no more than $112.5 million remains of FPL's claimed $1.1 billion in unrecovered costs (*see* Attachment B to this brief). The Plan provides that any unassigned added expense dollars should be booked to an unspecified depreciation reserve to be disposed of at a later time.[11] Essentially, FPL's excess revenues will be parked in the unspecified reserve until a need can be found for those monies.

In a rate case setting, the idea that FPL could inflate its revenue requirement by several hundred million dollars for "unspecified" purposes would be laughable. That proposal has even less credibility in a docket not initiated by a utility petition and where no showing of need has even been offered. No contingency condition or other circumstance has been identified to attempt to justify this provision. It simply ensures that under no circumstances will excess revenues be returned to ratepayers or lead to lowered rates. The Commission at a bare minimum should eliminate this provision from the Plan.

V. THERE IS NO RECORD BASIS FOR APPROVING THE PLAN IN ORDER TO ESTABLISH A "LEVEL ACCOUNTING PLAYING FIELD"

The Order Establishing Procedure rejected AmeriSteel's proposed issues relating to competition in the electric industry and stranded costs. FPL witness Gower briefly mentioned the PAA's references establishing a level accounting playing field between FPL and potential non-regulated competitors as a basis for approving the Plan.[12] Neither the PAA nor FPL's testimony provide any inkling of what is intended by a "level accounting playing field." As Mr.

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[11] Order No. PSC-97-0499-FOF-EI.
[12] Order No. PSC-97-0499-FOF-EI, p. 2.

DeWard's testimony described, there are many ways in which accounting for retail ratemaking purposes varies from accounting practices of unregulated businesses. (Tr. 169-170; 184-185). These differences routinely involve spreading costs over time among all customers that benefit from utility assets used in providing service. And they include benefits that spread over time as well as costs. (Tr. 189-191).

FPL witness Gower agreed that there are clear differences between regulatory accounting and accounting for unregulated businesses. (Tr. 42). He also made it clear that FPL was not advocating a policy shift by the Commission in this docket to establish a "level accounting playing field." (Tr. 43). If the Commission were contemplating such a radical change in its policy, it would need to provide proper notice and explain its intended action through a properly initiated rulemaking. This has not been attempted in this docket.

Also, the record in this docket neither defines nor explains this notion. The reference first appeared in Staff's April 1997 memorandum recommending adoption of the Plan through a PAA, but was not explained in that memo either. Whether originally intended as an oblique reference to looming competition in the electric industry – a matter AmeriSteel was precluded from addressing in this docket – or some other purpose there is no record basis for approving the Plan on the theory of establishing a level accounting playing field between FPL and potential unregulated competitors.

VI. CONCLUSION

The Plan to authorize FPL to take additional charges in 1998 and 1999 in order to offset revenue growth is not in the public interest. It imposes a hugely disproportionate cost burden on current customers that is not justified and provides benefits only to FPL's investors. AmeriSteel requests that the Public Service Commission reject the proposed Plan and instead initiate other actions required to safeguard FPL customers' interests.

Respectfully submitted,

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CERTIFICATE OF SERVICE
DOCKET NO. 970410-EI

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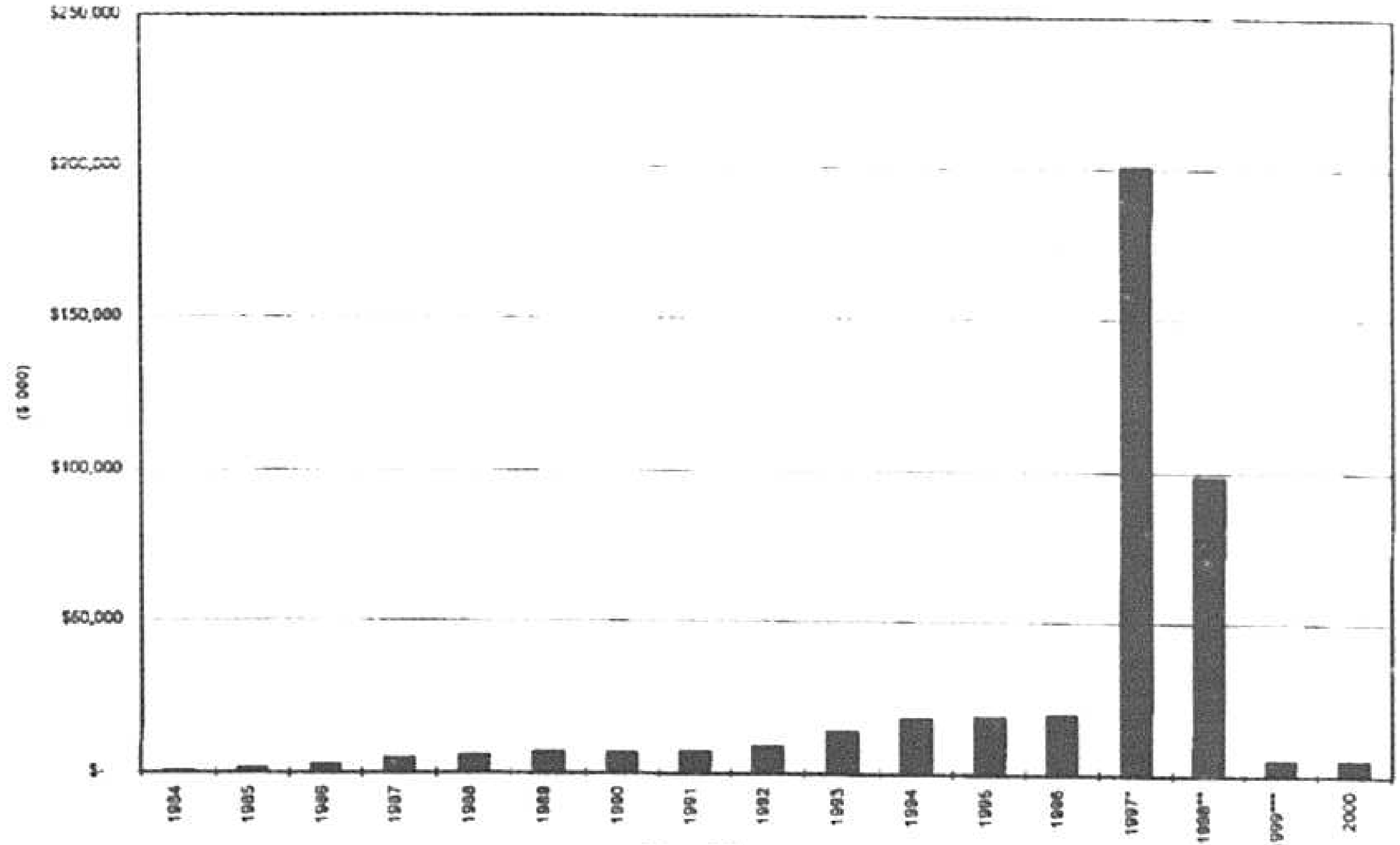
Attachment A

FPL ANNUAL AMORTIZATION OF LOSS ON REACQUIRED DEBT



Source: FPL response to Staff Interrogatory No.13

*Expected total charge per FPL response to Interrogatory No. 13.

**Per FPL Response to Staff Interrogatory No. 39; Tr. 56-57.

***Nominal amortization expense after return to amortization of debt reacquisition costs.

Attachment B

DOCKET NO. 970410-EI
COMPARISON OF EXPENSES TO BE RECOVERED AND EXPENSE THAT MAY BE CHARGED UNDER THE PLAN

LINE NO.	(COL. A) DESCRIPTION	(COL. D) EXPENSE RECOVERIES (per FPL WITNESS GOWER (000's) (Exh. 1)	(COL. D) KNOWN AMOUNTS SUBJECT TO RECOVERY IN 1998-1999 ($000's)
1	Depreciation Reserve Deficieinces	$250,142	$14,500
2	Book-Tax Timing Differences That Were flowed Through in Prior Years	79,254	$0
3	Unamortized Loss on Reacquired Debt	292,119	98,000
4	Fossil Dismantlement Reserve Deficiences*	34,437	?
5	Nuclear Decommissioning Reserve Deficiencies*	484,440	?
6	TOTAL	1,140,392	112,500
7	Amounts Available to be Expensesd in 1998-1999 Under the Plan		$761,000[1]-$841,000[2]
8	Excess Cost Recoveries		$648,500-$728-500

* Future Estimates may yield material changes in any perceived deficiency or surplus

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[1] Staff Exhibit 1-C, Exh. 8.
[2] Exhibit 14.