

GREENBERG
ATTORNEYS AT LAW
TRAURIG

ORIGINAL
RECEIVED 0100
JAN 29 10 48 32
RECEIVED 0100
TRAURIG

January 29, 1999

Blanca S. Bayo, Director
Division of Records and Reporting
Public Service Commission
4750 Esplanade Way, Room 110
Tallahassee, FL 32399

Re: Docket No. 971660-EI

Dear Ms. Bayo:

Enclosed is an original and fifteen (15) copies of The Coalition's Petition on Proposed Agency Action in the above docket. We have also enclosed a copy of the document on diskette, prepared in Microsoft Word 7.0 on a Windows 95 operating system. The diskette is a "2HD" density and 1.44 MB.

Please acknowledge the receipt of the above on the extra copy enclosed herein and return it to me. Thank you in advance for your assistance.

Sincerely yours,

Seann M. Frazier
Seann M. Frazier

- ACK
- AFA 100
- APP
- CAF
- CMH
- CTR
- EAC 2
- LEP 1
- LFI 5
- OFC
- RHM
- SL 1
- W-B
- OTH

12/30/98

RECEIVED & FILED
Seann
FPSO-BUREAU OF RECORDS

GREENBERG TRAURIG, P.A.
101 EAST COLLEGE AVENUE, POST OFFICE DRAWER 1818 TALLAHASSEE, FLORIDA 32302
850-222-6891 Fax 850-681-0207 www.gtlaw.com
MIAMI NEW YORK WASHINGTON, D.C. ATLANTA PHILADELPHIA TYSONS CORNER NEW PALM BEACH
FORT LAUDERDALE WEST PALM BEACH ORLANDO TALLAHASSEE BOCA RATON
DOCUMENT NUMBER DATE
01217 JAN 29 99
DIVISION OF RECORDS AND REPORTING

ORIGINAL

STATE OF FLORIDA
PUBLIC SERVICE COMMISSION

IN RE: ORDER APPROVING
FINAL DEPRECIATION RATES
FOR FLORIDA POWER & LIGHT COMPANY

PSC Docket No. 971660-EI
Order No. PSC-99-0073-FOF-EI
Issued: January 8, 1999

THE COALITION'S PETITION ON PROPOSED AGENCY ACTION

Petitioner, the COALITION FOR EQUITABLE RATES ("Coalition") petitions for formal administrative proceedings to review Order No. PSC-99-0073-FOF-EI, Docket No. 971660-EI pursuant to §§120.569(1) and 120.57, Florida Statutes and Rules 25-22.029 and 28-106.201, Florida Administrative Code. In support of this Petition, the Coalition states:

The Parties

1. The Coalition is the Petitioner. The Coalition is an association of entities, which pay Florida Power & Light Company ("FPL" or "Company") for power at rates approved by the Florida Public Service Commission ("PSC") and an association of entities, which represent such ratepayers. Representative examples of those entities within the Coalition include the Florida Health Care Association (which consists of most skilled nursing facilities and many assisted living facilities in Florida), Florida Retail Federation (which consists of major retailers in Florida) and the Florida Hotel and Motel Association (which consists of a large number of hotels and motels located in Florida). A substantial portion of the Coalition's members pay FPL for power. The Coalition is a "person" as defined by §101 and §120.52(13), Fla. Stat. The Coalition is authorized to monitor the basis for the rates charged to its members and to challenge such

DOCUMENT NUMBER-DATE

01217 JAN 29 99

FILED-REG. DIV./REPLYING

components, as well as the rates themselves in order to assure reasonable and affordable rates for services.

2. The Coalition maintains offices at 2300 N Street, Northwest, Washington, DC 20037, telephone number (202) 663-9097. However, for the purposes of this Petition, The Coalition may be contacted through its counsel, Ronald C. LaFace, Greenberg Traurig, P.A., 101 East College Avenue, Tallahassee, FL 32301, telephone number (850) 222-6891.

3. The agency affected by this Petition is the State of Florida, Public Service Commission ("PSC"), located at 2540 Shumard Oak Blvd., Tallahassee, FL 32399-0850, telephone number (850) 413-6248.

4. The "Order under Challenge" is Order No. PSC-99-0073-FOF-EI which concerns Florida Power & Light Company ("FPL"), located at 9250 West Flagler, P.O. Box 029100, Miami, FL 33174-3414. FPL may be contacted through its Vice President of Regulatory Affairs, Mr. Bill Walker, 215 S. Monroe Street, Suite 810, Tallahassee, FL 32301-1859, telephone number (850) 224-7517.

Order Under Challenge

5. Rule 25-6.0436, Florida Administrative Code, requires Investor Owned Utilities to file comprehensive depreciation studies at least once every four years. On December 26, 1997, FPL filed its regular depreciation study in accordance with this rule.

6. FPL also requested preliminary implementation of its proposed depreciation rates and amortization/recovery schedules as of January 1, 1998, in accordance with Rule 25-6.0436(5), Florida Administrative Code.

7. By Order No. PSC-98-0901-PCO-EI, issued July 6, 1998 that request was approved. Docket No. 971660-EI remained open while the 1997 depreciation rates and recovery schedules were reviewed.

8. On January 8, 1999, the Order Under Challenge (Order No. PSC-99-0073-EI) was issued with Attachments A, B and C outlining final depreciation rates for FPL's Steam Production Plant, Nuclear Production Plant, Other Production, Transmission Plant and Distribution Plant, as well as general plant amortization. The major provisions of that Order are as follows:

a. The rates and schedules in Attachments A, B and C of the Order under challenge are adopted as of January 1, 1998.

b. The schedules and rates implemented by Order No. PSC-98-0901-PCO-EI are revised as shown on Attachment A of the Order under challenge.

c. The Reserve amounts related to additional depreciation expense recorded in accordance with Order No. PSC-96-0461-FOF-EI:

i. \$175.3 million in Nuclear Production & \$60.3 million in Other Production are approved,

ii. The accumulated reserve adjustments attributable to the synchronization of Investment Tax Credits recorded in accordance with Order No. 16257 (Docket No. 840086-EI) and the additional depreciation expense recorded in accordance with Order No. PSC-98-0027-FOF-EI be transferred as shown on Attachment A. Approximately \$332 million (net) was transferred to reserve accounts on Attachment A. This amount was intended to correct alleged reserve deficiencies indicated by the 1997 depreciation study.

d. The allocation to reserve of an additional \$90 million in nuclear depreciation expense (\$30 million per year since January 1, 1996) is to be deferred until after a final decision in Docket No. 981390-EI for which the Coalition has also filed a Petition.

9. The Order under challenge included a "Notice of Further Proceedings or Judicial Review" which would allow substantially affected parties to file a petition challenging the Order on or before January 29, 1999. Representatives of the Coalition received news of the Order under challenge after its publication on January 8, 1999.

10. This Petition is timely filed as a challenge to Order No. PSC-99-0073-FOF-EI by the Coalition, a person whose substantial interests are affected by the actions in the Order under challenge.

Substantial Effect upon the Coalition

11. The Coalition represents entities which purchase electricity from FPL. In all, Coalition members pay approximately \$100 million to FPL annually for electric power.

12. As described in the argument below, The Coalition and its members object to the Order under challenge and believe it would not provide rate relief to ratepayers, such as the Coalition and its members.

13. If a depreciation study was correctly performed and applied to FPL, ratepayers such as the Coalition and its members would receive a reduction in rates paid to FPL. Attachment 1¹ shows that FPL's depreciation rates are by far the highest of a "peer" group sample of 20 major electric utilities. The attachment reveals that the composite rate for FPL's electric plant is approximately 5.8 percent, compared with 3.74 percent for the composite of 20

¹ Chart filed on PacifiCorp in response to Utah Division of Public Utilities Staff data request No. G2, Docket No. 98-235-03, dated December 1998.

companies, including FPL. If FPL's correct depreciation approximated that of the 20 companies, then its \$889 million in 1997 expense² would be reduced by 35 percent to \$578 million, a reduction of \$311 million. FPL's total 1997 revenue in 1997 was \$5,911 million³, so that a correction in depreciation of this magnitude, if passed through to ratepayers, would translate into a savings of 5.25 percent in ratepayer's bills. Since Coalition members pay approximately \$100 million to FPL in electricity charges, they would experience savings of \$5.25 million were FPL's depreciation adjusted to the industry norm. Thus, a substantial number of the Coalition's members are substantially affected by the Order under challenge.

Argument

The FPL 1997 Depreciation Study is technically flawed.

14. The technical flaws of the FPL's depreciation study have the effect of inflating necessary depreciation and thus obscuring over-earnings made by FPL. This ability to over-earn by inflating necessary depreciation defers rate cuts for consumers such as those represented by the Coalition. For example:

a. The average service lives for steam production plant assumed in the Order under challenge are far too short. For example, Scherer Units 3 & 4 are co-owned by Georgia Power and others. FPL claims that these units have a composite remaining life of approximately 17 years which translates into an assumed retirement year of 2015. These are modern coal units that have been in service only since 1986 and 1988, respectively. Since 1990, the Georgia Public Service Commission has used (and continued to use after a 1998 rate case) target retirement years of 2041 and 2043 to depreciate these same units.

² 1997 FPL FERC Form 1, Page 219, col. C, line 18.

³ 1997 FPL FERC Form 1, page 304.2, col. C, line 43.

b. Two of FPL's newer steam plants, Martin and Manatee, are to be fully depreciated over 30-35 year life spans pursuant to the Order under challenge. However, the current national trend is to practice life extension maintenance, which allows the major components in plants (boilers and turbogenerators) to run fifty years or more without replacement. An actuarial study of nationwide steam unit retirements and survivors during the period 1986 to 1997 reveals an average service life of 55 years.⁴

c. The 1997 FPL depreciation study contains numerous errors. For example, Port Everglades No. 1 shows a remaining life of over 5 years for most of its equipment. Yet, the structures show a remaining life of only 3.8 years.

15. The high negative net salvage rates used in the 1997 depreciation study appear to have been applied using decommissioning studies that incorporate the concept of "greenfield" dismantlement (removing the plant to grade and making the land suitable for other uses). The Company's own history and plans indicate that these plants are far more likely to be re-powered or replaced in a piece-meal fashion, rather than dismantled to greenfield status. This practice of incorporating high dismantlement costs acts to increase depreciation rates above what they should be and allows the Company to hide even more cash flow from the eyes of regulators.

16. In the General Plant accounts, there is listed a jet airplane. A jet airplane is not needed within the service territory of FPL. The Company bears the burden of demonstrating that Florida ratepayers are not paying an excessive rate for electricity through depreciation of this luxury item.

FPL 1997 Depreciation study acts to further "hide" over-earnings by FPL.

17. Even before the recent requests for accelerated depreciation by FPL, FPL had some of the highest depreciation rates in the nation. Attachments 2 and 3 show that FPL has the

⁴ See Testimony of Staff witness Charles N. King, Georgia P.S.C. Docket No. 9355-U.

highest depreciation rates for both Steam and Nuclear Production Plant among a "peer" group of twenty, similar large investor-owned utilities (data from FERC Form 1's).⁵ In fact, their depreciation rates were over *twice* the average of their peer group. These excessive depreciation rates were in 1996 – *before the increases discussed in the Order under challenge were implemented.*

18. The use of accelerated depreciation by FPL has increased rapidly since 1995 as shown in Table 1 below. At the same time, the Company's Operating Cash Flow has increased from \$1,298 million to \$1,765 million, an *increase* of 36 percent. In the same time period, however, the Company's capital expenditures (have gone from \$671 million to \$630 million – a *decrease* of 6.1 percent). This money has paid for debt repurchase and share buy-backs. There has been no benefit to the ratepayers from this policy. Only FPL's shareholders have benefited.

TABLE 1

Growth in Use of Accelerated Depreciation & Amortization by FPL.

\$ millions	1995	1996	1997	1998 (Est)
Accelerated Depreciation	163	188	221	255
Total Depreciation	918	960	1,061	1,213
Percent due to Acceleration	17.8%	19.6%	20.8%	21.0%

Data Source: Donaldson, Lufkin & Jenerette, *Electric Utilities*, January 5, 1999.

Conclusion

19. The Coalition respectfully submits that this Petition offers sufficient grounds to justify the convening of a formal hearing to consider modifications to the FPL 1997 depreciation Study preliminarily approved by the Commission January 8, 1999. Upon such consideration, the

⁵ Charts originally filed by PacifiCorp in response to Utah Division of Public Utilities (DPU) Staff data request No. G2, Docket No. 97-035-12/98

Coalition requests that the Order under challenge be modified to reduce all unnecessary and unreasonable depreciation rates and recovery/amortization described in the Order under challenge and its Attachments.

20. Disputed issues of fact include, but are not limited to:

a. Whether more reasonable depreciation rates and recovery/amortization schedules should be imposed upon FPL by the PSC;

b. Whether the proposed depreciation rates and recovery/amortization schedules are inappropriate and economically inefficient;

c. Whether FPL's ratepayers are entitled to immediate rate relief;

21. Disputed issues of law include, but are not limited to:

a. Whether more reasonable depreciation rates and recovery/amortization schedules should be imposed upon FPL by the PSC;

b. Whether the proposed depreciation rates and recovery/amortization schedules are inappropriate and economically inefficient;

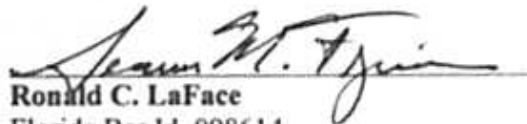
c. Whether FPL's ratepayers are entitled to immediate rate relief;

22. As a matter of ultimate fact and law, the depreciation rates and recovery/amortization sought by FPL as described in the Order under challenge should be reduced to remove unnecessary and unreasonable allowances. Additionally, if such reductions result in over-earnings by FPL, such over-earnings should be refunded to the customers of FPL, including members of the Coalition.

WHEREFORE, The Coalition respectfully requests the PSC to enter an order modifying the Order under Challenge as proposed in this Petition and other such relief as is available. The Coalition requests that this matter be heard by a full panel of five (5) Commissioners of the PSC pursuant to Rule 25-22.0355(4), Florida Administrative Code.

Respectfully submitted this 29th day of January, 1999

GREENBURG TRAUIG, P.A.
101 East College Avenue
Post Office Drawer 1838
Tallahassee, FL 32302
(850) 222-6891



Ronald C. LaFace
Florida Bar Id. 098614
Seann M. Frazier
Florida Bar No. 971200

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that the original and fifteen (15) copies of the foregoing has been furnished by Hand Delivery to Public Service Commission Director, Division of Records and Reporting, 2540 Shumard Oak Blvd., Tallahassee, FL 32399-0850; a copy has been furnished via Hand Delivery to the Office of Public Counsel, Jack Shreve, 812 Pepper Building, 111 W. Madison Street, Tallahassee, Florida 32399-1400; via U.S. Mail to the parties on the attached mailing list this 29th day of January, 1999.



Seann M. Frazier

Mailing List

Florida Electric Cooperative Assoc.

Michelle Hershel
P.O. Box 590
Tallahassee, Florida 32302
Tele phone(850) 877-6166
Telecopier (850)656-5485

***Florida Industrial Power Users Group and
Tropicana Products, Inc.***

c/o John W. McWhirter, Jr.
McWhirter, Reeves, McGlothlin, et al
P. O. Box 3350
Tampa, FL 33601
and
Joseph A. McGlothlin, Vicki Gordon Kaufman
McWhirter, Reeves, McGlothlin, et al
117 South Gadsden Street
Tallahassee, FL 32301

Florida Power & Light Company

c/o of Bill Walker,
Vice President Regulatory Affairs,
215 South Monroe Street, Suite 810,
Tallahassee, FL 32301-1859
and
Matthew M. Childs
Steel, Hector & Davis
215 South Monroe Street
Suite 601
Tallahassee, FL 32301-1804

Florida Public Service Commission

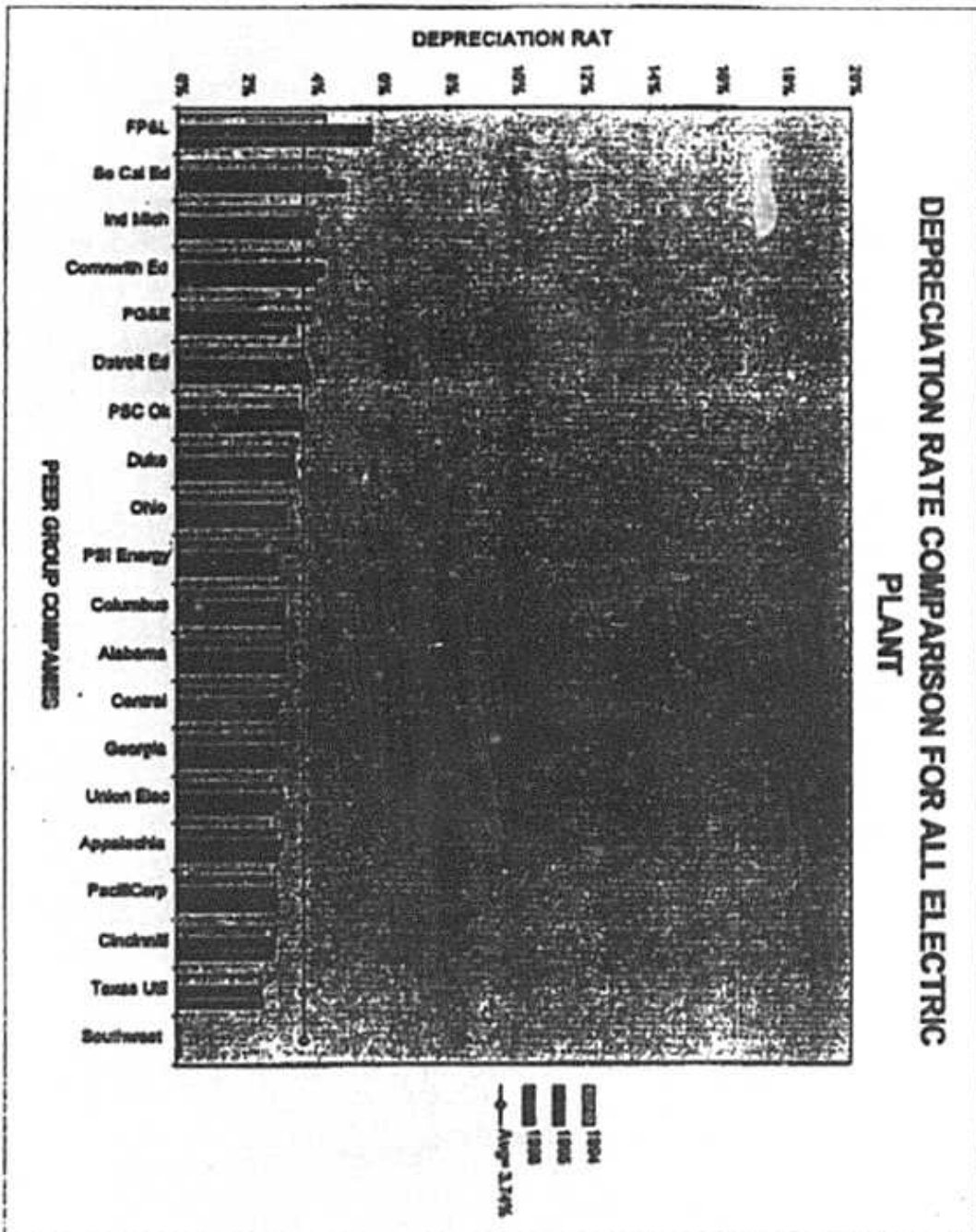
Robert V. Elias
Division of Legal Services
2540 Shumard Oak Boulevard
Gunter Building, Room 370N
Tallahassee, FL 32399-0850

Office of Public Counsel
c/o John Roger Howe
Office of Public Counsel
111 West Madison Street
Room 812
Tallahassee, FL 32399-1400

***Florida Alliance for Lower Electric Rates Today and
Georgia-Pacific Corporation***
J. Michael Huey
J. Andrew Bertron, Jr.
Huey, Guilday & Tucker, P.A.
P. O. Box 1794
Tallahassee, FL 32302-1794

123187

DEPRECIATION RATE COMPARISON FOR ALL ELECTRIC PLANT



DEPRECIATION RATE COMPARISON FOR STEAM PLANT

