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REPORTING

February 8, 1999

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

Re: Docket No. 981390-EI

Dear Ms. Bayo:

Enclosed is an original and fifteen (15) copies of The Coalition's Motion for Reconsideration 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.

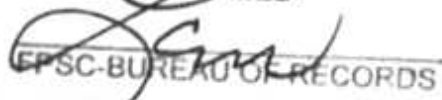
Sincerely yours,



Seann M. Frazier

- ACK _____
- AFA Heater
- APP _____
- CAF _____
- CMU _____
- CTR _____ Enclosures
- EAG 2 SMF/skl
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01619 FEB-88

FPSC-RECORDS/REPORTING

STATE OF FLORIDA
FLORIDA PUBLIC SERVICE COMMISSION

ORIGINAL

In re: Investigation into the equity ratio
and return on equity of Florida Power &
Light Company

Docket No. 981390-EI
Date: February 8, 1999

**COALITION FOR EQUITABLE RATES,
FLORIDA INDUSTRIAL POWER USERS GROUP AND
TROPICANA PRODUCT, INC.'s
MOTION FOR RECONSIDERATION**

Coalition for Equitable Rates ("Coalition"), Florida Industrial Power Users Group ("FIPUG"), and Tropicana Product, Inc. ("Tropicana") jointly move for the reconsideration of Order No. PSC 99-0178-PCO-EI, specifically the List of Issues to be addressed in this docket attached as Exhibit A. In support of this motion, Coalition, FIPUG, and Tropicana state:

1. On January 21, 1999, all parties in this docket met and discussed issues at an informal meeting called by counsel for the Public Service Commission ("PSC"). Though Florida Power & Light Company ("FPL") offered no issues to be decided, counsel for the Coalition, FIPUG, Tropicana, and Alliance for Lower Electric Rates Today ("ALERT") offered preliminary lists of issues.

2. At the conclusion of the informal conference, PSC's counsel suggested that the petitioners, including Coalition, FIPUG, Tropicana and ALERT consolidate their issues to a single list to be provided to PSC's counsel the following Wednesday, January 27, 1999. The intervenors established such a list and provided it to PSC counsel as requested.

3. It is unknown whether FPL ever identified the issues it believes should be addressed in this docket.

DOCUMENT NUMBER-DATE

01619 FEB-89

FPSC-RECORDS/REPORTING

4. Without further discussion, without oral argument, and without any further consideration, the Prehearing Officer assigned issued an Order Establishing Procedure ("Order").

5. The Order contained a list of issues to be addressed in this docket. However, the list of issues identified by the Prehearing Officer did not coincide with that submitted by the Coalition, FIPUG, Tropicana, and ALERT.

6. Though some of the issues suggested by the intervenors may be addressed under issues listed in the Order, other issues were excluded. Those issues include:

a. Who has the burden of proof to effectuate the action proposed in Order No. PSC-98-1748-FOF-EI?

b. Has the uses of the additional cash flow generated by the rapid amortization benefitted Florida rate payers?

c. 12. Should the Commission immediately subject potentially excess revenues subject to refund in the event the "rapid amortization" program is discontinued and FPL's earned rate of return exceeds a reasonable level?

d. Should FPL's base rates be reduced?

e. If excess earnings are flowed through to rate payers in the form of rate reductions, should they be distributed so as to move class revenues closer to relative class costs?

(hereinafter collectively referred to as the "Missing Issues").

7. Omission of the Missing Issues undermines both procedural fairness of this proceeding and the substantive nature of what this proceeding should accomplish.

8. This proceeding is governed by Florida's Administrative Procedure Act ("APA") which provides:

All parties shall have an opportunity to ... present evidence and argument on all issues involved....

§120.57(1)(b), Fla. Stat. (Supp. 1998)(emphasis added). Due process has long been recognized as a core value of the APA. *Rathmann v. Pacesetter Industries, Inc.*, 452 So. 2d 1091 (Fla. 4th DCA 1984); *Gray v. Fla. Dep't of Labor and Employment Security*, 375 So. 2d 341 (Fla. 1st DCA 1979). **More particularly, the denial of an opportunity to address an issue in administrative proceedings before the Public Service Commission is reversible error.** *Duval Utility Company v. Fla. Public Service Commission*, 380 So. 2d 1028, 1029-30, fn. 1 (Fla.1980).

9. The Prehearing Order's identification of fewer issues than those alleged to be involved denies due process to those who have filed the petitions which initiated these proceedings. Elimination of important issues without oral argument or any discussion is inherently unfair. Such action violates the APA's requirement that the final hearing consider "all issues" involved.

10. Elimination of the issues identified above changes the nature of these proceedings immeasurably. Essentially, the Missing Issues relate to which party has the burden of proof in these proceedings and whether these proceedings may result in rate reductions to FPL's customers. The very intent of each of the intervenors' petitions was to effectuate a change in the rates paid to FPL. The Prehearing Order should not be allowed to eliminate the core issues in this proceeding, whether rates may be reduced without at a minimum hearing argument from the parties on the important of these issues. To do so places in peril the due process this proceeding was designed to protect.

11. The list of Issues in the Order is described as "Final." However, the parties understood that an opportunity would be provided at the February 16, 1999 Prehearing Conference to further develop a list of issues to be addressed in this proceeding.

12. Your undersigned counsel is authorized to represent that this Motion is filed jointly by the Coalition, FIPUG and Tropicana.

13. Counsel for the Coalition attempted to contact counsel for FPL and ALERT, but was unable to do so before filing this motion. Counsel for the PSC takes no position on this motion.

WHEREFORE, Coalition, FIPUG, and Tropicana jointly move the Prehearing Officer to reconsider the list of issues to be included in the Prehearing Order and in this docket so that the PSC will receive issues on all issues, including the Missing Issues. Oral argument is requested.

Respectfully submitted this 8th day of February, 1999.

GREENBERG TRAUIG, P.A.

101 East College Avenue

Post Office Drawer 1838

Tallahassee, FL 32302

904/222-6891



Ronald C. LaFace

Florida Bar Id. 098614

Seann M. Frazier

Florida Bar No. 971200

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that the original of the foregoing and fifteen (15) copies and one (1) diskette has been furnished by Hand Delivery to Blanca S. Bayo, Director, Public Service Commission Director, Division of Records and Reporting, Florida Public Service Commission, 4750 Esplanade Way, Room 110, Tallahassee, FL 32399; a copy has been furnished via Hand Delivery to Matthew M. Childs, Steel, Hector & Davis, LLP, 215 South Monroe Street, Suite 601, Tallahassee, FL 32301-1804, and a copy has been served via U.S. Mail to the parties on the attached mailing list this 8th day of February, 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

Florida Public Service Commission

Robert V. Elias
Division of Legal Services
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Office of Public Counsel

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Harris Corporation

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Corporate Planning Department
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Tampa, FL 33688-2000
Telephone (813)963-0994
Telecopier (813)264-7906

Tropicana Products, Inc.

c/o Mait Kane
1001 12th Avenue East
Bradenton, FL 34208

***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

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BEFORE THE FLORIDA PUBLIC SERVICE

COMMISSION

In re: Investigation into the equity ratio and return on equity of Florida Power & Light Company.
DOCKET NO. 981390-EI
ORDER NO. PSC-99-0178-PCO-EI
ISSUED: January 29, 1999

ORDER ESTABLISHING PROCEDURE

This matter has been set for hearing to consider the protests of Order No. PSC-98-1748-FOF-EI, issued December 22, 1998. Order No. PSC-98-1748-FOF-EI, issued as proposed agency action, approved a proposal by Florida Power & Light Company to, among other things, reduce its authorized return on equity, cap the amount of equity in its capital structure, and record certain additional amounts as current expenses.

This Order is issued pursuant to the authority granted by Rule 28-106.211, *Florida Administrative Code*, which provides that the presiding officer before whom a case is pending may issue any orders necessary to effectuate discovery, prevent delay, and promote the just, speedy, and inexpensive determination of all aspects of the case.

The scope of this proceeding shall be based upon the issues raised by the parties and Commission staff (staff) unless modified by the Commission. To assure the efficient, just, and timely resolution of the protests to Order No. PSC-98-1748-FOF-EI, it is the Prehearing Officer's intention to finalize the issues to be considered by the Commission as quickly as is reasonably possible. The hearing will be conducted according to the provisions of Chapter 120, *Florida Statutes*, and all administrative rules applicable to this Commission.

Discovery

When discovery requests are served and the respondent intends to object to or ask for clarification of the discovery request, the objection or request for clarification shall be made within ten days of service

All parties in this docket shall file a prehearing statement. Staff will also file a prehearing statement. The original and 15 copies of each prehearing statement shall be prefiled with the Director of the Division of Records and Reporting by the close of business, which is 5:00 p.m., on the date due. A copy of the prehearing statement shall be served on all other parties and staff no later than the date it is filed with the Commission. Failure of a party to timely file a prehearing statement shall be a waiver of any issue not raised by other parties or by the Commission. In addition, such failure shall preclude the party from presenting testimony in support of its position. Such prehearing statements shall set forth the following information in the sequence listed below.

- (a) The name of all known witnesses that may be called by the party, and the subject matter of their testimony;
- (b) a description of all known exhibits that may be used by the party, whether they may be identified on a ORDER NO. PSC-99-0178-PCO-EI APPENDIX A composite basis, and the witness sponsoring each;
- (c) a statement of basic position in the proceeding;
- (d) a statement of each question of fact the party considers at issue, the party's position on each such issue, and which of the party's witnesses will address the issue;
- (e) a statement of each question of law the party considers at issue and the party's position on each such issue;
- (f) a statement of each policy question the party considers at issue, the party's position on each such issue, and which of the party's witnesses will address the issue;
- (g) a statement of issues that have been stipulated to by the parties;
- (h) a statement of all pending motions or other matters the party seeks action upon; and
- (i) a statement as to any requirement set forth in this order that cannot be complied with, and the reasons therefore.

Status Conference

A status conference will be held in this docket on Tuesday, February 16, 1999, at 2:00 p.m., or upon the conclusion of the Commission's regularly scheduled agenda conference, whichever is later. The conference will be held in Room 148, Betty Easley Conference Center, 4075 Esplanade Way, Tallahassee, Florida. The purpose of the status conference is to address any pending motions requiring a ruling by the prehearing officer, to finalize the issues to be addressed at the hearing currently set for April 12 and 13, 1999, and for such other matters as are determined by the prehearing officer to be appropriate. This status conference ORDER NO. PSC-99-0178-PCO-EI APPENDIX A may be canceled by the prehearing officer if it is determined to be unnecessary.

Prehearing Conference

Pursuant to Rule 28-106.209, *Florida Administrative Code*, a prehearing conference will be held in this docket on March 29, 1999, at the Betty Easley Conference Center, 4075 Esplanade Way, Tallahassee, Florida. Any party who fails to attend the prehearing conference, unless excused by the Prehearing Officer, will have waived all issues and positions listed in that party's prehearing statement.

Prehearing Procedure: Waiver of Issues

Any issue not raised by a party prior to the status conference shall be waived by that party, except for good cause shown. A party seeking to raise a new issue after that time shall demonstrate that: it was unable to identify the issue because of the complexity of the matter; discovery or other prehearing procedures were not adequate to fully develop the issue; due diligence was exercised to obtain facts touching on the issue; information obtained subsequent to the issuance of the prehearing order was not previously available to enable the party to identify the issue; and introduction of the issue could not be to the prejudice or surprise of any party. Specific reference shall be made to the information received, and how it enabled the party to identify the issue.

Unless a matter is not at issue for that party, each party shall diligently endeavor in good faith to take a position on each issue prior to issuance of the prehearing order. When a party is unable to take a position on an issue, it shall bring that fact to the attention of the Prehearing Officer. If the Prehearing Officer finds that the party has acted diligently and in good faith to take a position, and further finds that the party's failure to take a position will not prejudice other parties or confuse the proceeding, the party may maintain "no position at this time" prior to hearing and thereafter identify its position in a post-hearing statement of issues. In the absence of such a finding by the Prehearing Officer, the party shall have waived the entire issue. When an issue and position have been properly identified, any party may adopt that issue and position in its post-hearing statement.

Issues

Attached to this order as Appendix "A" is a list of the issues which have been identified in this proceeding. Prefiled ORDER NO. PSC-99-0178-PCO-EI APPENDIX A testimony and prehearing statements shall address the issues set forth in Appendix "A".

Document Identification

To facilitate the management of documents in this docket, exhibits will be numbered at the Prehearing Conference. Each exhibit submitted shall have the following in the upper right-hand corner: the docket number, the witness's name, the word "Exhibit" followed by a blank line for the exhibit number and the title of the exhibit.

An example of the typical exhibit identification format is as follows:

Docket No. 12345-TL

J. Doe Exhibit No. _____

Cost Studies for Minutes of Use by Time of Day

Controlling Dates

The following dates have been established to govern the key activities of this case.

1) Status Conference (if necessary)	February 16, 1999
2) Utility's direct testimony and exhibits	February 26, 1999
3) Intervenors' direct testimony and rebuttal to utility's direct testimony and exhibits	March 12, 1999
4) Staff's direct testimony and exhibits, if any	March 19, 1999
5) Prehearing Statements	March 19, 1999
6) Utility's rebuttal testimony (all) and Intervenors' rebuttal to Staff testimony (if any) and exhibits	March 26, 1999
7) Prehearing Conference	March 29, 1999
8) Hearing	April 12 - 13, 1999
9) Briefs	May 3, 1999

Use of Confidential Information At Hearing

ORDER NO. PSC-99-0178-PCO-EI APPENDIX A It is the policy of this Commission that all Commission hearings be open to the public at all times. The Commission also recognizes its obligation pursuant to Section 366.093, *Florida Statutes*, to protect proprietary confidential business information from disclosure outside the proceeding. Any party wishing to use any proprietary confidential business information, as that term is defined in Section 366.093, *Florida Statutes*, shall notify the Prehearing Officer and all parties of record by the time of the Prehearing Conference, or if not known at that time, no later than seven (7) days prior to the beginning of the hearing. The notice shall include a procedure to assure that the confidential nature of the information is preserved as required by statute. Failure of any party to comply with the seven-day requirement described above shall be grounds to deny the party the opportunity to present evidence which is proprietary confidential business information.

When confidential information is used in the hearing, parties must have copies for the Commissioners, necessary staff, and the Court Reporter, in envelopes clearly marked with the nature of the contents. Any party wishing to examine the confidential material that is not subject to an order granting confidentiality shall be provided a copy in the same fashion as provided to the Commissioners, subject to execution of any appropriate protective agreement with the owner of the material. Counsel and witnesses are cautioned to avoid verbalizing confidential information in such a way that would compromise the confidential information. Therefore, confidential information should be presented by written exhibit when reasonably possible to do so. At the conclusion of that portion of the hearing that involves confidential information, all copies of confidential exhibits shall be returned to the proffering party. If a confidential exhibit has been admitted into evidence, the copy provided to the Court Reporter shall be retained in the Division of Records and Reporting's confidential files.

Post-Hearing Procedure

Each party shall file a post-hearing statement of issues and positions. A summary of each position of

no more than 50 words, set off with asterisks, shall be included in that statement. If a party's position has not changed since the issuance of the prehearing order, the post-hearing statement may simply restate the prehearing position; however, if the prehearing position is longer than 50 words, it must be reduced to no more than 50 ORDER NO. PSC-99-0178-PCO-EI APPENDIX A words. If a party fails to file a post-hearing statement in conformance with the rule, that party shall have waived all issues and may be dismissed from the proceeding.

Pursuant to Rule 28-106.215, *Florida Administrative Code*, a party's proposed findings of fact and conclusions of law, if any, statement of issues and positions, and brief, shall together total no more than 50 pages, and shall be filed at the same time.

Based upon the foregoing, it is

ORDERED by Commissioner J. Terry Deason, as Prehearing Officer, that the provisions of this Order shall govern this proceeding unless modified by the Commission.

By ORDER of Commissioner J. Terry Deason as Prehearing Officer, this 29th day of January, 1999.

/s/ J. Terry Deason

J. TERRY DEASON

Commissioner and Prehearing Officer

*This is a facsimile copy. A signed copy of the order may be obtained by calling 1-850-413-6770.
(SEAL)*

RVE

NOTICE OF FURTHER PROCEEDINGS OR JUDICIAL REVIEW

The Florida Public Service Commission is required by Section 120.569(1), *Florida Statutes*, to notify parties of any administrative hearing or judicial review of Commission orders that is available under Sections 120.57 or 120.68, *Florida Statutes*, as well as the procedures and time limits that apply. This notice should not be construed to mean all requests for an administrative hearing or ORDER NO. PSC-99-0178-PCO-EI APPENDIX A judicial review will be granted or result in the relief sought.

Mediation may be available on a case-by-case basis. If mediation is conducted, it does not affect a substantially interested person's right to a hearing.

Any party adversely affected by this order, which is preliminary, procedural or intermediate in nature, may request: (1) reconsideration within 10 days pursuant to Rule 25-22.0376, *Florida Administrative Code*, if issued by a Prehearing Officer; (2) reconsideration within 15 days pursuant to Rule 25-22.060, *Florida Administrative Code*, if issued by the Commission; or (3) judicial review by the Florida Supreme Court, in the case of an electric, gas or telephone utility, or the First District Court of Appeal, in the case of a water or wastewater utility. A motion for reconsideration shall be filed with the Director, Division of Records and Reporting, in the form prescribed by Rule 25-22.060, *Florida*

Administrative Code. Judicial review of a preliminary, procedural or intermediate ruling or order is available if review of the final action will not provide an adequate remedy. Such review may be requested from the appropriate court, as described above, pursuant to Rule 9.100, Florida Rules of Appellate Procedure.

LIST OF ISSUES

ISSUE 1: Should FPL be authorized to amortize regulatory assets, or their equivalent, established pursuant to future Commission orders and directed to become subject to the amortization plan?

ISSUE 2: Should FPL be authorized to amortize the portion of unused nuclear fuel remaining in nuclear plants upon decommissioning, which may be properly attributable to customers prior to the end of 1999 and which, together with the amount, will be determined in the annual fuel docket?

ISSUE 3: Should FPL be required to amortize \$140 million per year through December 31, 2000, as a fixed amount in addition to the expense recorded under the current plan which is determined by taking 100% of the difference between FPL's forecasted 1996 Most Likely Revenue equal to \$3,224.1 million and Low Band Revenue equal to \$3,140.9 million and at least 50% of the base rate revenues produced by retail sales above FPL's Most Likely sales forecast for 1996, as filed in Docket No. 950359-EI?

ISSUE 4: In the event that there are no longer items to be amortized under the plan prior to December 31, 2000, should FPL be required to record amounts based on the formula in the plan in a regulatory liability account subject to the Commission's final determination for the use of those funds?

ISSUE 5: What is the appropriate return on equity for all regulatory purposes?

ISSUE 6: What is the appropriate equity ratio for earnings surveillance purposes?

ISSUE 7: What is the appropriate use of the accumulated balance of nuclear amortization (\$90 million) as of December 31, 1998?

ISSUE 8: Should FPL be required to use the most cost effective financing available to fund its Capital Expansion Program?

ISSUE 9: Should the Plan be modified and extended through December 31, 2000, as set forth in Order No. PSC-98-1748-FOF-EI?

ISSUE 10: Should this docket be closed? ORDER NO. PSC-99-0178-PCO-EI APPENDIX A

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