

**Marguerite McLean**080677-EI  
090130-EI

**From:** Lindo, Jacqueline E. [JacquelineLindo@andrewskurth.com]  
**Sent:** Tuesday, August 11, 2009 4:02 PM  
**To:** Filings@psc.state.fl.us  
**Subject:** Docket No. 080677-EI and 090130-EI- SFHHA MEMORANDUM RE ADDITIONAL ISSUES  
**Importance:** High  
**Attachments:** SFHHA Memorandum re Additional Issues.pdf

## Electronic Filing

- a. Person responsible for this electronic filing:

Kenneth L. Wiseman  
 Andrews Kurth LLP  
 1350 I Street, NW  
 Suite 1100  
 Washington, DC 20005  
 202-662-2715 (phone)  
 202-662-2739 (fax)

- b. Docket No. 080677-EI and 090130-EI.  
 c. Document being filed on behalf of South Florida Hospital and Healthcare Association (SFHHA).  
 d. There is a total of 6 pages.  
 e. The document attached for electronic filing is: Memorandum of South Florida Hospital and Healthcare Association Concerning Issues to Include in The List of Issues

(See attached SFHHA Memorandum re Additional Issues.pdf)

Thank you for your attention and cooperation to this request.

Jacqueline E. Lindo  
 Andrews Kurth LLP  
 1350 I. Street, N.W.  
 Suite 1100  
 Washington, D.C. 20005  
 Phone: (202) 662-3030  
 Fax: (202) 662-2739

**Confidentiality Notice:** The information contained in this e-mail and any attachments to it may be legally privileged and include confidential information intended only for the recipient(s) identified above. If you are not one of those intended recipients, you are hereby notified that any dissemination, distribution or copying of this e-mail or its attachments is strictly prohibited. If you have received this e-mail in error, please notify the sender of that fact by return e-mail and permanently delete the e-mail and any attachments to it immediately. Please do not retain, copy or use this e-mail or its attachments for any purpose, nor disclose all or any part of its contents to any other person. Thank you.

Any tax advice in this e-mail (including any attachment) is not intended or written to be used, and cannot be used, by any person, for the purpose of avoiding penalties that may be imposed on the person. If this e-mail is used or referred to in connection with the promoting or marketing of any transaction(s) or matter(s), it should be construed as written to support the promoting or marketing of the transaction(s) or matter(s), and the taxpayer should seek advice based on the taxpayer's particular circumstances from an independent tax advisor.

08342 AUG 11 09

8/11/2009

FPSC-COMMISSION CLERK

**BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION**

<b>In re: Petition for rate increase by Florida Power &amp; Light Company</b>	) ) )	<b>Docket No. 080677-EI</b>
<b>In re: 2009 depreciation and dismantlement study by Florida Power &amp; Light Company</b>	) )	<b>Docket No. 090130-EI Dated: August 11, 2009</b>

**MEMORANDUM OF  
THE SOUTH FLORIDA HOSPITAL AND HEALTHCARE ASSOCIATION  
CONCERNING ADDITIONAL ISSUES TO INCLUDE IN THE LIST OF ISSUES**

The South Florida Hospital and Healthcare Association (“SFHHA”) hereby submits this Memorandum pursuant to the “Order Allowing Memorandum on Additional Issues,” issued August 6, 2009 by Commissioner Katrina J. McMurrian, as Prehearing Officer. This Memorandum discusses two issues that SFHHA submits should be added to the list of issues to be resolved in this case. SFHHA shows below that: (1) testimony has been submitted concerning both of these issues, (2) both issues concern matters that are directly relevant to the determination of the rates that Florida Power & Light Company (“FPL”) should be authorized to charge and (3) neither of these issues is subsumed under other issues that already are included in the list of issues to be resolved. Therefore, for the reasons discussed below, SFHHA requests that the list of issues be amended to include the two issues proposed by SFHHA.

- A. ISSUE 49: Should FPL’s estimated plant in service be reduced to reflect the actual capital expenditures implemented in 2009 on an annualized basis carried forward into the projected test Year(s) and for reductions of a similar magnitude?**
- A. For the 2010 projected test year?**  
**B. If applicable, for the 2011 subsequent projected test year?**

SFHHA witness Kollen explained in his testimony that:

For the first four months of 2009, the Company cut its capital expenditures by \$170 million from budget levels, from \$897 million to \$727 million. This is a reduction of 19.0% or \$529 million on an annual basis compared to the Company’s \$2,790 million 2009 capital expenditure budget.

Kollen Testimony at 63.

Based upon the fact that FPL had cut its capital expenditures from budgeted levels during the first four months of 2009, Mr. Kollen recommends that the reductions be made, on an annualized basis, to FPL's rate base in 2009, and that such reductions be carried forward into the 2010 projected test year. *Id.* He also recommends that reductions of a similar magnitude be carried forward into the 2011 subsequent test year. *Id.*

It is necessary to add Issue 49 to the issues list because no other issue directly addresses the specific facts discussed by Mr. Kollen, *i.e.*, that the Company's actual capital expenditures to date in 2009 are significantly less than the capital expenditures in the Company's 2009 budget. SFHHA believes that FPL thought that the matters raised by Mr. Kollen in the above-referenced testimony could be discussed under Issue 50 and that FPL objected to the inclusion of Issue 49 on that basis. However, SFHHA does not believe that it would be appropriate to discuss the matters concerning budget cuts under Issue 50. Moreover, doing so would be inconsistent with the way the rest of the issues list is constructed.

Issue 50 is a broad formulation that allows each party to express its "bottom line" position on the propriety of FPL's rate base. The position expressed in response to that issue will set forth a party's quantification, rather than a substantive discussion of each adjustment a party supports to reach that quantification. In recognition that a position stated in response to Issue 50 merely would be a quantification, the parties delineated a host of specific issues, the answers to which, on a composite basis, will form the basis for each party's answer to Issue 50. *See* Issues 45-47 and 51-63.

Issue 49 is of exactly the same nature as Issues 45-47 and 51-63 in that the answer to Issue 49 will provide one element of the answer to Issue 50. Thus, SFHHA must be able to set forth its substantive discussion of the budget cuts in response to Issue 49 in order to derive its

“bottom line” quantification in response to Issue 50. There is no other issue that addresses reductions in the Company’s capital expenditures budget in 2009 and the resulting reductions in plant in service amounts in the 2010 test year due to lower capital expenditures. Nor is there any other issue that addresses the carry forward effect in 2011. As a result, it is necessary to include Issue 49 in the specific issues to be resolved as a build-up to the answer to Issue 50.

**B. ISSUE 65: Should FPL be required to use the entire amount of customer deposits and ADIT related to utility rate base in its capital structure?**

It is necessary to add Issue 65 to the issues list for reasons that are similar to the reasons for adding Issue 49.

In his testimony, Mr. Kollen testified that FPL has diluted low-cost capital provided by customer deposits and cost-free capital provided by Accumulated Deferred Income Taxes (“ADIT”) by prorating those amounts in its proposed capital structure. Kollen Testimony at 67-68. As a result, Mr. Kollen recommends that adjustments should be made to FPL’s capital structure to account for customer deposits and ADIT, as well as for investment tax credits (“ITC”). Kollen Testimony at 66-69.

No issue that currently is in the list of issues directly addresses FPL’s *pro rata* adjustment calculations to reduce customer deposits and ADIT from the total Company amounts that are reflected in the Company’s proposed retail jurisdictional capital structure. Issue 64 discusses ADIT, but not in the context of FPL’s *pro rata* adjustment, *i.e.*, Issue 64 is more generic in nature. No issue addresses customer deposits. There are other general issues that address the appropriate capital structure, such as Issue 73. However, those other issues, as in the case of Issue 50 discussed above, are more akin to quantification issues rather than substantive decision issues. Issue 65 on the other hand highlights the substantive issue that must be decided and

whether there should be a *pro rata* reduction in customer deposits, ADIT and ITC from the levels produced by FPL's retail utility operations.

Because there is no issue that even arguably addresses the treatment of customer deposits for cost of capital purposes, and because all other issues that relate to ADIT are more general in nature, Issue 65 should be included as a separate, specific issue in the list of issues. The answer to Issue 65 thus would serve as one element to provide the quantification responsive to Issue 73.

For the foregoing reasons, SFHHA requests that Issues 49 and 65 be added to the list of issues in this case.

Respectfully submitted,

/s/Kenneth L. Wiseman

Kenneth L. Wiseman  
Mark F. Sundback  
Jennifer L. Spina  
1350 I Street, NW  
Suite 1100  
Washington, DC 20005  
Tel: (202) 662-2700  
Fax: (202) 662-2739

Lino Mendiola  
Meghan Griffiths  
111 Congress Avenue  
Suite 1700  
Austin, TX 78701  
Tel: (512) 320-9200  
Fax: (512) 320-9292

Attorneys for South Florida Hospital and  
Healthcare Association

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that a copy of the foregoing has been furnished by electronic mail and U.S. mail to the following parties on this 11th day of August, 2009 to the following:

Robert A. Sugarman  
D. Marcus Braswell, Jr., Esq.  
I.B.E.W. System Council U-4  
c/o Sugarman Law Firm  
100 Miracle Mile, Suite 300  
Coral Gables, FL 33134

J.R. Kelly  
Office of Public Counsel  
c/o The Florida Legislature  
111 W. Madison Street, Room 812  
Tallahassee, FL 32399-1400

Jean Hartman  
Lisa Bennett  
Martha Brown  
Anna Williams  
Office of General Counsel  
Florida Public Service Commission  
2540 Shumard Oak Blvd.  
Tallahassee, FL 32399-0850

Thomas Saporito  
Saporito Energy Consultants  
Post Office Box 8413  
Jupiter, FL 33468-8413

John T. Butler  
Florida Power & Light Company  
700 Universe Boulevard  
Juno Beach, FL 33408-0420

Mr. Wade Litchfield  
Florida Power & Light Company  
215 South Monroe Street, Suite 810  
Tallahassee, FL 32301-1859

Robert Scheffel Wright  
c/o Florida Retail Federation  
225 South Adams Street, Suite 200  
Tallahassee, FL 32301

Jack Leon, Natalie Smith  
Senior Attorney  
Florida Power & Light Company  
9250 W. Flagler Street, Suite 6514  
Miami, Florida 33174

Bill McCollum, Attorney General  
Cecilia Bradley, Senior Assistant General  
Florida Bar No. 0363790  
Office of the Attorney General  
The Capitol – PL01  
Tallahassee, FL 32399-1050

Bethany Burgess  
Brian P. Armstrong  
Nabors, Giblin & Nickerson, PA  
1500 Mahan Drive, Suite 200  
Tallahassee, FL 32308

John W. McWhirter, Jr.  
c/o McWhirter Law Firm  
PO Box 3350  
Tampa, FL 33601

Joseph McGlothlin  
Office of Public Counsel  
c/o The Florida Legislature  
111 W. Madison Street, Room 812  
Tallahassee, FL 32399-1400

Vicki Gordon Kaufman  
Jon C. Moyle, Jr.  
Keefe Anchors Gordon & Moyle  
118 North Gadsden Street  
Tallahassee, FL 32301

Tamela Ivey Perdue  
Associated Industries of Florida  
516 North Adams Street  
Tallahassee, FL 32301  
Phone: 850-224-7173

Dan Moore/Stephanie Alexander  
Association For Fairness In Rate Making  
316 Maxwell Road, Suite 400  
Alpharetta, GA 30009

Shayla L. McNeill, Capt, USAF  
Federal Executive Agencies  
c/o AFLSA/JACL-ULT  
139 Barnes Drive, Suite 1  
Tyndall AFB, FL 32403-5319

/s/ Kenneth L. Wiseman  
Kenneth L. Wiseman, Esq.