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090505 - EI

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Subject: e-filing (Dkt. No. 090505-EI)
Attachments: 090505.Opposition to FPL mot recon.sversion.doc

Electronic Filing

a. Person responsible for this electronic filing:

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b. Docket No. 090505-EI

In re: Review of replacement fuel costs associated with the February 26, 2008 outage on Florida Power & Light Company's electrical system.

c. Document being filed on behalf of Office of Public Counsel

d. There are a total of 7 pages.

e. The document attached for electronic filing is the Joint Response of Citizens, Attorney General, and FIPUG in Opposition to FPL's Motion for Reconsideration of Order No. PSC-10-0381-FOF-EI.

(See attached file: 090505.Opposition to FPL mot recon.sversion.doc)

Thank you for your attention and cooperation to this request.

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DOCUMENT NUMBER-DATE

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FPSC-COMMISSION CLERK

7/7/2010

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In Re: Review of Replacement Fuel Costs)
Associated with the February 26, 2008 outage)
On Florida Power & Light's electrical system)
_____)

Docket No. 090505-EI

Filed: July 7, 2010

**JOINT RESPONSE OF CITIZENS, ATTORNEY GENERAL, AND FIPUG IN
OPPOSITION TO FPL'S MOTION FOR RECONSIDERATION OF ORDER NO. PSC-
10-0381-FOF-EI**

The Citizens of Florida, through the Office of Public Counsel, the Attorney General of the State of Florida, and the Florida Industrial Power Users Group file this joint response in opposition to the motion for reconsideration of Order No. PSC-10-0381-FOF-EI (Final Order) filed by Florida Power & Light Company (FPL) on June 30, 2010.

Standard for Motion for Reconsideration

The standard of review for a motion for reconsideration is whether the motion identifies a point of fact or law which was overlooked or which the Commission failed to consider. *Stewart Bonded Warehouse, Inc. v. Bevis*, 294 So.2d 315 (Fla. 1974); *Diamond Cab Co. v. King*, 146 So.2d 889 (Fla. 1962); *Pingree v. Quaintance*, 394 So.2d 161 (Fla. 1st DCA 1981). As the court found in *State ex. Rel. Jaytex Realty Co. v. Green*, 105 So.2d 817 (Fla. 1st DCA 1959), the purpose of reconsideration is to "call to the attention of the court some fact, precedent or rule of law which the court has overlooked in rendering its decision." As demonstrated below, FPL has failed to meet this standard and therefore its motion must be denied.

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FPSC-COMMISSION CLERK

Summary

FPL couches its motion for reconsideration in terms of a “mistake of fact” concerning the amount of time FPL spent repairing a rod position indicator system at Turkey Point Unit 3 during the outage at issue. The motion, however, has nothing to do with a mistake of fact. Instead, the motion is an attempt to have the Commission change the standard it used to grant FPL a credit against the outage time. The Commission determined that FPL should be granted a credit for the *incremental* time the outage was extended due to the repair to the rod position indicator system. (Final Order at 8). FPL, however, wants the Commission to delete the term *incremental* from the standard it applied and give FPL credit whether or not the outage was extended due to the repair. The Commission should soundly reject FPL’s motion.

Background

On February 26, 2008, an FPL field engineer employee tested a circuit switcher at the Flagami substation located in western Miami. Once there, the FPL employee disabled both the primary circuit protection and the breaker failure protection, which is considered a secondary level of protection. The employee did not advise the FPL load dispatcher at the FPL Control Center that he had disabled the secondary level of protection as well as the primary protection. And the load dispatcher failed to tell the system operator at the FPL Control Center that any of the protection had been disabled.

A shunt reactor and its associated circuit switcher operated live on the electric system for approximately 37 minutes with the two levels of protection disabled.

A fault occurred during the FPL engineer's activities which caused a 17 – 19 second arc, and because both layers of protection had been disabled, a three-phase fault occurred on the 138 kilovolt transmission system to which the Flagami substation was connected. This, in turn, led to significant frequency swings which tripped transmission lines and generators around portions of the lower two-thirds of Florida.

In all, the Flagami episode shut down 4,300 MW of generation. In addition to three gas-fired generators, this total included two nuclear plants, Turkey Point Units 3 and 4, which were out of service for 158 hours and 107 hours, respectively.

In December 2009, FPL entered into a Proposed Resolution of Issues (PRI) with the Office of Public Counsel and the Office of the Attorney General. FIPUG adopted the PRI in January, 2010. In that agreement, FPL agreed to bear the cost of replacement power attributable to the incident; however, the appropriate measure of replacement power costs remained an issue to be determined by the Commission in this docket. The Commission held evidentiary hearings on March 17 and 18, 2010, to resolve this issue. The Final Order contains the Commission's decision on the merits of the case.

Turkey Point Unit 3 Outage

Although FPL agreed to bear the cost of replacement power attributable to the Flagami incident, the Commission gave FPL credit for the incremental time added to the outage due to repairs to the rod position indicator system at Turkey Point Unit 3. (Final Order at 8). Although Turkey Point Unit 3 was off line for 158 hours, the Commission

gave FPL credit for 27 hours of incremental time for the repair of the rod position indicator system, thus reducing the time of the outage for which FPL is responsible from 158 hours to 131 hours, and correspondingly reducing the amount of the refund due to ratepayers.

FPL, however, wants the Commission to give it credit for 126 of the 158 hours of the outage for Unit 3. FPL argues that it spent 126 hours during the outage working on the repair of the rod position indicator system. (Motion at 3). Under the scenario FPL advocates, it would assume responsibility for only 32 hours of the outage at Unit 3, while customers would be responsible for approximately four times as much of the outage. According to the record, when one accounts for power ascension, the normal time for restarting two nuclear units falls within the range of 85 to 135 hours *without* the complexities of additional tasks. To treat the entire 126 hours that FPL claims are related to the rod position indicator system as incremental to the restart attributable to the Flagami episode would mean that FPL spent only 32 hours on the latter activity. It is clear, therefore, that much of the time spent working on the repair of the rod position indicator was concurrent with, and took place in parallel to, the restart activities attributable to the Flagami incident. In other words, FPL wants the Commission to ignore the distinction between the time spent on the control rod repair, on the one hand, and the impact of that activity on the overall outage, on the other.

The Commission said plainly that only the latter consideration is relevant to the subject of adjustments for mitigating circumstances. The Final Order clearly states that "incremental time added by the repairs would be borne by the ratepayers." (Final Order

at 8). FPL blithely ignores this standard and *disregards* the key question: to what extent was the outage *extended* due to the repairs made to the rod position indicator system? It would be one thing to argue that the length of the outage was extended because of these repairs and that the company should not be held responsible for that extension. But this is not what FPL seeks. Rather, FPL asks the Commission to excuse it from responsibility for the outage related to the repair of the rod position indicator system even if the work on the rod position indicator had nothing to do with the length of the outage.¹

FPL is in no position to complain about the evidence the Commission used to determine the length of time the outage was extended due to the repair. Though it certainly had the opportunity to do so, FPL did not provide any evidence at hearing, such as a critical path analysis, to show the length of time the outage may have been extended due to the repair. Since repairs to the rod position indication system were done at the same time that other restart functions were being accomplished, without any evidence, there is no way to know by how much, if any, the outage was extended due to the repair. FPL, for example, could have provided evidence of a Gantt chart analysis, a critical path analysis, or some other project time management tool analysis which might have provided the answer. FPL chose not to present this evidence and therefore cannot now show how long the outage was extended due to this repair. By crediting FPL with 27 hours against the total restart time, the Commission has already given FPL the “benefit of the doubt,” because FPL failed to show that the 27 hours were incremental to, and not concurrent with, the other repair efforts for which the

¹ FPL’s attempt to utilize a new standard that is different than that articulated in the Final Order renders its discovery attachments irrelevant.

Commission held FPL accountable as a result of the Flagami outage. If the Commission makes any change to the Final Order, it should be to eliminate the credit for 27 hours since there is no evidence to show the incremental time added to the outage to accomplish the repair.

Turkey Point Unit 4 Outage

FPL also argues that the Commission should give it 8 hours credit for an 8-hour relay repair at Turkey Point Unit 4. (Motion at 6). This argument suffers from the same infirmity as does the argument concerning Unit 3. There is no evidence to show that the outage at Unit 4 was incrementally extended by 8 hours due to the relay failure. Moreover, as the Commission noted, the outage time of 107 hours at Unit 4 was well within the typical time frame suggested by FPL for restarting two nuclear units. (Final Order at 9; Stall, Tr. 54.)

Conclusion

FPL has not shown any mistake of law or fact underlying the Commission's Final Order. Its arguments are simply a back door attempt to change the standard the Commission used to determine the extent of FPL's responsibility for the outage. FPL's disagreement with the standard the Commission used does not demonstrate a mistake of law or fact and is therefore insufficient to support reconsideration of the Final Order. The Commission should deny FPL's motion.

Respectfully submitted,

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