

Dorothy Menasco100410-EI
100009-EI
080677-EI

From: rpjrb@yahoo.com
Sent: Tuesday, December 07, 2010 3:51 PM
To: Filings@psc.state.fl.us; John.Butler@fpl.com
Subject: Electronic Service / Dockets 100410-EI / 100009-EI / 080677-EI / Robert H. Smith Response to FPL Response to Robert Smith's M/for FPL to Answer Staff's Data Request

Attachments: 12072010 Robert H Smith response to FPL response to Smith Question 3 Motion.pdf

Dear Ann Cole, Office of Commission Clerk and Apryl Lynn, Division of Administrative Services and Mr. Butler,

Attached is the PDF filing for the Robert H. Smith response to Florida Power & Light's response to motion for Florida Power & Light to Answer Question 3 to Staff's Data request No. 1 in order to inspect and examine and answer to question 3 email that I have sent on Tuesday, December 7th, 2010. The attached PDF file is to serve as the electronically filed document based upon the E-Filing requirements as per Florida Public Service Commission Electronic Filing Requirements.

I am sending this to the above email addresses only to meet the E-Filing requirements as per Florida Public Service Commission Electronic Filing Requirements

Thanks,

Robert H. Smith

Confidentiality Statement

The documents accompanying this telecopy transmission contain information which is confidential and/or legally privileged. The information is intended only for the use of the individual or entity named on this transmission sheet. If you are not the intended recipient, you are hereby notified that any disclosure, copying, distribution or the taking of any action in reliance on the contents of this telecopied information is strictly prohibited, and the documents should be returned. In this regard, if you received this telecopy in error, please contact the sender by reply E-mail and destroy all copies of the original.

12/7/2010

DOCUMENT NUMBER-DATE

09802 DEC-7 09

FPSC-COMMISSION CLERK

Robert H. Smith
Ratepayer/Shareholder
11340 Heron Bay Blvd. #2523
Coral Springs, Florida 33076-1629

Tuesday, December 07, 2010

Ann Cole and Apryl Lynn
Office of Commission Clerk and
Division of Administrative Services
Florida Public Service Commission
2540 Shumard Oak Blvd.
Tallahassee, FL 32399-0850

RE: Robert H. Smith response to Florida Power & Light's response to motion for Florida Power & Light to Answer Question 3 to Staff's Data request No. 1 in order to inspect and examine and answer to question 3. / Dockets 100410-EI, 100009-EI and 080677-EI

Dear Ms. Lynn:

Enclosed is Robert H. Smith's response to Florida Power & Light's response to motion for Florida Power & Light to Answer Question 3 to Staff's Data request No. 1 in order to inspect and examine and answer to question 3. / Dockets 100410-EI, 100009-EI and 080677-EI

Copies of the response will be served to all parties that have a legal interest in the proceeding as outlined below.

Sincerely,

/S Robert H. Smith

DOCUMENT NUMBER DATE

09802 DEC-7 e

FPSC-COMMISSION CLERK

Certificate of Service
Dockets 100410-EI, 100009-EI and 080677-EI

I HEREBY CERTIFY that a true and correct copy of the Robert H. Smith response to Florida Power & Light's response to motion for Florida Power & Light to answer question 3 to Staff's Data Request No. 1 in order to inspect and examine the answer to question 3 email dated December 7th, 2010 was served via electronic email on Tuesday December 7th, 2010 and to filings@psc.state.fl.us on Tuesday December 7th, 2010. All issues as outlined in the response to Florida Power & Light's response dated Tuesday, December 7th, 2010 below has been sent to the parties listed below.

Electronic email dated Tuesday December 7th, 2010

Email: Lisa Bennett / LBENNETT@PSC.STATE.FL.US
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Attorneys for SACE

/S Robert H. Smith

Before the Florida Public Service Commission

In re:) Docket No. 100410-EI
) Docket No. 100009-EI
) Docket No. 080677-EI
Response to Florida Power & Light response dated) Emailed Filed December 7th, 2010
December 6th, 2010 by Robert H. Smith ratepayer/) Electronically Filed December 7th, 2010
Shareholder with a legal interest for the answer/release)
of an answer to the Staff Data Request No. 1, Question 3)
in order to inspect and examine the answer to question)
3 that might have a legal impact on my legal interest in)
these proceeding as outlined by the appeal email dated)
November 26th, 2010.)

**ROBERT H. SMITH'S RESPONSE TO FLORIDA POWER & LIGHT'S RESPONSE
TO MOTION FOR FLORIDA POWER & LIGHT TO ANSWER QUESTION 3 TO
STAFF'S DATA REQUEST NO.1 IN ORDER TO INSPECT AND EXAMINE THE
ANSWER TO QUESTION 3**

Pursuant to Rule 28-106.204, Florida Administrative Code, Robert H. Smith hereby files this response to Florida Power & Light Company's Response to Answer Question 3 to Staff's Data Request No. 1 in Order to inspect and examine the Answer to Question 3, filed November 26th, 2010.

FPL Response:

1. As an initial matter, FPL notes that Mr. Smith is not a party to any of the above dockets and thus is not entitled to file pleadings such as the Smith Motion. Moreover, the Smith Motion relates to FPL's response to a November 16, 2010 data request that Staff made to FPL in Docket No. 100410-EI (the "Staff Data Request"). The Staff Data Request thus has no connection to Docket Nos. 100009-EI or 080677-EI, yet the Smith Motion cites to them in its subject line.

DOCUMENT NUMBER DATE

09802 DEC-7 2010

FPLSC-COMMISSION CLERK

Robert H. Smith Response:

Mr. Butler has indicated that "Mr. Smith is not a party to any of the above dockets" is not accurate since *I am both a ratepayer and a shareholder of the company*. As a ratepayer and a shareholder of this company I should be afforded full transparency to protect my legal interests in any rate proceeding as per Section 350.042 (1) of the Florida Statutes. Furthermore based upon Federal preemption, I am requesting this information under Title 5 of §557(d) (1), §557(a), §556, §553(c), §554(a) of the Administrative Procedure Act. Since this would be considered a formal ruling making and formal adjudication I feel that I am within my right's to protect my legal interest to make sure that all pertinent questions are being asked before the Stipulation and Settlement agreement is signed. This motion would have a direct connection to Docket Nos. 100009-EI or 080677-EI since the cash base rates are going to be set for the term of the Stipulation and Settlement agreement. With Docket 080677-EI there is a pending motion to agree to the Stipulation and Settlement agreement. This agreement would set the level of cash base rates which might have a direct impact on the over earnings that is in Docket 100410-EI proceeding. With Docket 100009-EI this is a proceeding in which they are moving certain costs out of a base rate recovery into a separate cost recovery clause. If the cash rates are set which includes base rate recovery for any costs associated with the nuclear uprates, then the possibility exists that embedded in the Stipulation and Settlement agreement will be a level of recovery for the nuclear uprates that are being moved out of base rate recovery for recovery through a Nuclear cost recovery clause. Based upon the original order in Docket 080677, the Nuclear Uprates of \$168.2 million (see email dated Friday, July 30, 2010 1:14 PM)has been removed from Base rates through the removal from ratebase. This will be recovered through the Nuclear Recovery Clause. What is the current level of rate relief for the Nuclear Uprates that is embedded into base rates? According to the estimate that I have it would in the range of \$18 million to \$20 million. Based upon the original settlement, ratebase would have been adjusted to adjust the cash base rates for the removal of these costs from base rate recovery. If the Stipulation and Settlement agreement is accepted *instead of the original order there will be \$18 million to \$20 million embedded into the current cash base rates*. Since the agreement calls for keeping the base rates the same for the term of the Stipulation and Settlement agreement the customer would not see a *current reduction for this item*. *With the original order there would have been a cash reduction in base rates for this item since it would have been removed from ratebase/the cost of service*. I have provided for estimated calculations below. Another issue that we would have to take a look at is the *rate of return on the carrying charges* that will be calculated with the new Nuclear Cost Recovery Clause. Based upon the original order these returns were going to be *trued up* for the updated cost of money. I have asked numerous questions regarding the rate of return that will be used to calculate the carrying charges on the nuclear uprates costs. Is this rate going to be locked at the old rate or is it going to be adjusted by the original order? If the Stipulation and Settlement agreement is approved the carrying charges on the nuclear uprates might be adjusted based upon the company's control of the depreciation surplus amortization. They will be able to adjust the earned returns to keep them within the range of the terms in the pending stipulation and settlement agreement.

Nuclear Uprates

\$168.2 million

Removed from Base Rates. Recovered through Nuclear Cost Recovery Clause. Removed from RateBase?
Calculated Carrying Charges? Will the cash recovery in Base rates equal the new recovery in cash rates
based upon the new Nuclear Cost Recovery Clause? Is this a break even for cash recovery or has the
amount of time to recover these costs changed?

Florida Power & Light Company
Docket No. 08-0677-EI
December 2010 Projected Test Year
Operating Revenue Increase Calculation

<u>Line No.</u>	<u>Nuclear Uprates</u>	<u>Nuclear Uprates</u>	<u>Diff</u>
1. Rate Base	168,234,989	168,234,989	.
2. Overall Rate of Return	7.41%	6.65%	-0.76%
3. Required Net Operating Income (1)x(2)	12,469,404	11,187,627	(1,281,777)
4. Achieved Net Operating Income	-	-	-
5. Net Operating Income Deficiency (3) - (4)	12,469,404	11,187,627	(1,281,777)
6. Net Operating Income Multiplier	1.63411	1.63411	1.63411
7. Operating Revenue Increase (5)x(6)	20,378,377	18,281,813	(2,094,564)

7.41% as per January 1, 2009 Approved AFUDC rate. Matches the December, 2008 Rate of Return Report
6.65% as per calculated overall cost of money as per 08-0677-EI

Florida Power & Light Company
 Docket No. 08-0677-EJ
 December 2010 Projected Test Year
 Operating Revenue Increase Calculation

Line No.	As Filed	Commission Adjusted	Nuclear Updates	Nuclear Updates	Diff
1. Rate Base	17,063,588,000	16,797,429,918	168,234,989	168,234,989	-
2. Overall Rate of Return	6.00%	6.65%	7.41%	6.65%	-0.76%
3. Required Net Operating Income (1)x(2)	1,364,748,000	1,116,364,090	12,489,404	11,187,627	(1,281,777)
4. Achieved Net Operating Income	725,885,000	1,070,179,348	-	-	-
5. Net Operating Income Deficiency (3) - (4)	638,863,000	48,184,742	12,489,404	11,187,627	(1,281,777)
6. Net Operating Income Multiplier	1.83342	1.63411	1.83411	1.63411	1.63411
7. Operating Revenue Increase (5)x(6)	1,043,538,000	78,470,948	20,378,377	18,281,613	(2,096,764)

7.41% as per January 1, 2009 Approved AFUDC rate. Matches the December, 2008 Rate of Return Report
 6.65% as per calculated overall cost of money as per 08-0677-EJ

As per Title 5 of §557(d) (1), §557(a), §556, §553(c), §554(a) of the Administrative Procedure Act:

§557(d) (1) prohibits ex parte communication in any agency proceeding that is subject to the Administrative Procedure Act

§557(a). This section applies "when a hearing is required to be conducted in accordance with §556 of this title

§556 applies "to hearings required by §553 and §554 of the Administrative Procedure Act

§553(c) makes §556 and §557 applicable to a rulemaking proceeding "when rules are required by statute to be made on the record after opportunity for an agency hearing".

§554(a) makes §556 and §557 applicable "in every case of adjudication required by statute to be determined by an agency hearing

The Administrative Procedure prohibition of ex parte communications applies only when a statute requires an agency to issue a rule or to resolve an adjudicatory dispute "on the record after opportunity for agency hearing. The two cases of agency proceedings are often referred to as formal rulemaking and formal adjudication.

Any rate case that the Florida Public Service Commission is hearing would be considered a formal rulemaking and formal adjudication therefore "ex parte communications would be prohibited based upon Title 5 of the Administrative Procedure Act.

350.042

Ex parte communications.

—

- (1) A commissioner should accord to every person who is legally interested in a proceeding, or the person's lawyer, full right to be heard according to law, and, except as authorized by law, shall neither initiate nor consider ex parte communications concerning the merits, threat, or offer of reward in any proceeding other than a proceeding under s. 120.54 or s. 120.565, workshops, or internal affairs meetings. No individual shall discuss ex parte with a commissioner the merits of any issue that he or she knows will be filed with the commission within 90 days. The provisions of this subsection shall not apply to commission staff.

FPL Response:

2. Though the Smith Motion is far from clear, there appear to be essentially two elements to the relief it seeks. First, it appears to be asking the Commission to compel FPL to file restated earnings surveillance reports (“ESRs”) pursuant to Question 3 of the Staff Data Request. Second, the Smith Motion raises a series of five questions that allegedly relate to FPL’s response to Question 3, which apparently Mr. Smith either is posing to FPL directly or is suggesting that Staff should pose to FPL. These two elements of the Smith Motion are addressed below.

Robert H. Smith Response:

My motion is very specific . It contains very specific questions that I would need to have an answer to in order to protect my legal interests in these proceedings. It is also specific as it relates to Federal/State laws as it pertains to “ex parte” communications and coverage under the Energy Policy Act of 2005. See response below for the two specific responses from Florida Power & Light.

FPL’s Response to Question 3

3. The Smith Motion appears to be demanding that FPL provide restated hypothetical monthly ESRs in response to Question 3. As noted above, Mr. Smith is not a party to Docket No. 100410-EI, or the other two dockets he cites. FPL provided information in response to the Staff Data Request. FPL respectfully suggests that Staff will follow up on FPL’s response if Staff feels that it needs any further information.

Robert H. Smith Response:

First off based upon Mr. Butler’s response, the questions that were being asked are not demanding. Based upon my prior experience with these cases these types of questions would be asked to serve as normal due diligence in order to substantiate any ruling with these types of proceedings. As I have indicated as a ratepayer and a shareholder of this company I should be afforded full transparency to protect my legal interests in any rate proceeding as per Section 350.042 (1) of the Florida Statutes. As a requirement under Section 350.042 (1) of the Florida Statutes I should be afforded the opportunity to the “full right to be heard according to law”. Furthermore, Regulation FD, S-X and S-K are equally important to these proceedings since when we talk about cash rates any requirements under the Energy Policy Act of 2005 or the Public Utility Holding Act of 2005 would preempt any non-disclosure issues to protect Utility ratepayers. See Energy Policy Act of 2005 42 USC 15801 SEC 1261 to SEC 1270. This is a

very critical piece of this case since the commission would need this type of information to be in conformity with the Energy Policy Act of 2005 42 USC 15801 SEC 1261 to SEC 1270. Any analysis for the justification of approving the Stipulation and Settlement agreement would require for full transparency and the release of any information that might impact the ruling on the proposed Stipulation and Settlement Agreement. If the information is not furnished to the Commission and/or other interested parties with a legal interest, then pertinent questions might not be able to be asked for the justification of the approval of the proposed Stipulation and Settlement agreement. Under 42 USC 15801 SEC 1265(a) (3), the State Commission should have access to the books and records of the company that "are necessary for the effective discharge of the responsibilities of the State Commission with respect to such proceeding." The release of any analysis that would be needed before a ruling on the proposed Stipulation and Settlement agreement would be warranted based upon this section of the Statute. This might preempt rule 25-6-1352. Furthermore, based upon my previous appeal (Docket 080677) for a Motion to inspect and examine confidential material which appears to be being afforded under my rights under Title 5 of §557(d) (1), §557(a), §556, §553(c), §554(a) of the Administrative Procedure Act, Freedom of Information Act (FOIA), 5 U.S.C. § 552 and 350.042, 350.117 of the Florida Statutes it appears that if this type of analysis is not completed and made part of Public Docket 080677, 100009 and 100410 respectively, then the possibility exists that the proper due diligence might not have been completed to justify the ruling on the proposed Stipulation and Settlement agreement. This is why I followed up with an email with questions regarding similar/additional questions to the company which will be made part of the Public record in Docket 080677, Docket 100009 and Docket 100410 respectively. This questioning is not demanding. Proper due diligence would lead to this type of questioning when a decision has to be made to see the impacts of the Stipulation and Settlement agreement. Since I am a person with a legal interest with experience with these cases I felt that based upon my legal interest I would be afforded the ability to ask the pertinent questions just like any other parties in this case. My experience might lend itself to additional questioning that might be pertinent with the decision on the Stipulation and Settlement agreement. I have been asking these types of questions for over a year. Some of the email correspondence was sent to Florida Power & Light as it pertains to their 10K disclosure(s). In order for a party with a legal interest to protect their interests the only avenue currently available to a ratepayer/shareholder is the 10K disclosure and the public information that has been made part of the public Dockets. At times there may be additional questioning that might be pertinent to be asked in order for the public docket to provide the proper information for a person to protect their interest. If there is information that might require transparency to support the case then any party with a legal interest should be able to request information to support the ruling. Transparency would be the only way that a person with a legal interest would be able to protect their legal interests. If the Commission only allows a party of record to question and ask for information, and not afford any party with a legal interest to question/request information to protect their legal interest then this questioning might be "one sided" questioning which might lead to "ex parte" communications. All three cases are directly related as I have indicated in my response above.

Here are the applicable statutes under the Energy Policy Act.

Energy Policy Act of 2005.
42 USC 15801
SEC. 1261. SHORT TITLE.

This subtitle may be cited as the "Public Utility Holding Company Act of 2005".

Under Section 1265(a) (3), the State Commission should have access to the books and records of the company that "are necessary for the effective discharge of the responsibilities of the State Commission with respect to such proceeding." The release of any analysis that would be needed before a ruling on the Settlement and Stipulation agreement would be warranted based upon this section of the Statute. This might preempt rule 25-6-1352.

SEC. 1265. STATE ACCESS TO BOOKS AND RECORDS.

(a) **IN GENERAL.**—Upon the written request of a State commission having jurisdiction to regulate a public-utility company in a holding company system, the holding company or any associate company or affiliate thereof, other than such public-utility company, wherever located, shall produce for inspection books, accounts, memoranda, and other records that—

(1) have been identified in reasonable detail in a proceeding before the State commission;

(2) the State commission determines are relevant to costs incurred by such public-utility company; and

(3) are necessary for the effective discharge of the responsibilities of the State commission with respect to such proceeding.

SEC. 1267. AFFILIATE TRANSACTIONS.

(a) **COMMISSION AUTHORITY UNAFFECTED.**—Nothing in this subtitle shall limit the authority of the Commission under the Federal Power Act (16 U.S.C. 791a et seq.) to require that jurisdictional rates are just and reasonable, including the ability to deny or approve the pass through of costs, the prevention of cross-subsidization, and the issuance of such rules and regulations as are necessary or appropriate for the protection of utility consumers.

(b) **RECOVERY OF COSTS.**—*Nothing in this subtitle shall preclude the Commission or a State commission from exercising its jurisdiction under otherwise applicable law to determine whether a public-utility company, public utility, or natural gas company may recover in rates any costs of an activity performed by an associate company, or any costs of goods or services acquired by such public-utility company from an associate company.*

As per FAS 131 / Accounting Principles and Allocations

84. **The Board decided not to require that segment information be provided in accordance with the same generally accepted accounting principles used to prepare the consolidated financial statements for several reasons. Preparing segment information in accordance with the generally accepted accounting principles used at the consolidated level would be difficult because some generally accepted accounting principles are not intended to apply at a segment level. Examples include allocation of the cost of an acquisition to individual assets and liabilities of a subsidiary using the purchase method of accounting, accounting for the cost of enterprise-wide employee benefit plans, accounting for income taxes in an enterprise that files a consolidated income tax return, and accounting for inventory on a last-in, first-out basis if the pools include items in more than one segment. In addition, there are no generally accepted accounting principles for allocating joint costs, jointly used assets, or jointly incurred liabilities to segments or for pricing intersegment transfers. As a consequence, it generally is not feasible to present segment profitability in accordance with generally accepted accounting principles.**

87. The Board believes that the information required by this Statement meets the objective of reliability of which both representational faithfulness and verifiability are components. An auditor can determine whether the information reported in the notes to the financial statements came from the required source by reviewing management reports or minutes from meetings of the board of directors. **The information is not required to be provided on a specified basis, but the enterprise is required to explain the basis on which it is provided and to reconcile the segment information to consolidated enterprise totals. Adequate explanation and an appropriate reconciliation will enable a user to understand the information and its limitations in the context of the enterprise's financial statements. The auditor can test both the explanation of segment amounts and the reconciliations to consolidated totals. Furthermore, because management uses that information in its decision-making processes, that information is likely to be highly reliable.** The information provided to comply with Statement 14 was more difficult to verify in many situations and was less reliable. Because it was prepared solely for external reporting purposes, it required allocations that may have been arbitrary, and it was based on accounting principles that may have been difficult to apply at the segment level.

Title 17: Commodity and Securities Exchanges

[Browse Previous](#) | [Browse Next](#)

PART 210—FORM AND CONTENT OF AND REQUIREMENTS FOR FINANCIAL STATEMENTS, SECURITIES ACT OF 1933, SECURITIES EXCHANGE ACT OF 1934, PUBLIC UTILITY HOLDING COMPANY ACT OF 1935, INVESTMENT COMPANY ACT OF 1940, INVESTMENT ADVISERS ACT OF 1940, AND ENERGY POLICY AND CONSERVATION ACT OF 1975

Regulation S-X

Special Requirements as to Public Utility Holding Companies

Reg. § 210.3A-05.

There shall be shown in the consolidated balance sheet of a public utility holding company the difference between the amount at which the parent's investment is carried and the underlying book equity of subsidiaries as at the respective dates of acquisition.

Regulation S-K

§ 229.10 (Item 10) General.

Instructions to Item 101.

1. In determining what information about the segments is material to any understanding of the registrant's business taken as a whole and therefore required to be disclosed pursuant to paragraph (c) of this Item, the registrant should take into account both quantitative and qualitative factors such as the significance of the matter to the registrant (e.g., whether a matter with a relatively minor impact on the registrant's business is represented by management to be important to its future profitability), the pervasiveness of the matter (e.g., whether it affects or may affect numerous items in the segment information), and the impact of the matter (e.g., whether it distorts the trends reflected in the segment information). Situations may arise when information should be disclosed about a segment although the information in quantitative terms may not appear significant to the registrant's business taken as a whole.
2. Base the determination of whether information about segments is required for a particular year upon an evaluation of interperiod comparability. For instance, interperiod comparability would require a registrant to report segment information in the current period even if not material under the criteria for reportability of SFAS No. 131 if a segment has been significant in the immediately preceding period and the registrant expects it to be significant in the future.
3. The Commission, upon written request of the registrant and where consistent with the protection of investors, may permit the omission of any of the information required by this Item or the furnishing in substitution thereof of appropriate information of comparable character.

FPL Response:

4. FPL has not withheld any available information in its response to Question 3. To the contrary, FPL worked diligently to provide Staff with a high-level, close approximation of the impact on the ESRs for March 2010 through September 2010 of reflecting the rate case order's level of amortization for depreciation reserve surplus credits. That approximation shows the rate base, net operating income, overall rate of return, non-equity cost rates, the net return to equity holders, the equity ratio and, ultimately, the return on equity, both on an FPSC-adjusted and pro forma (weather-normalized) basis. FPL believes that the information it provided in response to Question 3 sufficiently illustrates what FPL's earnings would have been if the depreciation reserve surplus credits had been amortized as contemplated in the rate case order.

Robert H. Smith Response:

The response above appears not to be accurate. "FPL believes that the information it provided in response to Question 3 sufficiently illustrates what FPL's earnings would have been if the depreciation reserve surplus credits had been amortized as contemplated in the rate case order."

According to the response below it indicates that the ESR calculations represent an approval of the Stipulation and Settlement agreement since it was probable. This is why I asked for the motion to present the recalculated ESR's based upon the original rate order as indicated by Staff's question No. 3.

It appears that Florida Power & Light already changed the actual accounting on the company's books to reflect the approval of the Stipulation and Settlement Agreement without affording both the Commission and any other party with a legal interest to see the ESR's calculated based upon the original rate order that was issued. This includes the original depreciation surplus amortization terms as set by the original order. Considering that the Stipulation and Settlement agreement has not been approved there would be no reason to restate the ESR's until the Stipulation and Settlement agreement was approved. How would a party with a legal interest determine if the proposed Stipulation and Settlement agreement is better than the original order? Unless the Company provided the full transparency to present both impacts (with/without the Stipulation and Settlement agreement) there would be no way for any party with a legal interest to determine which option would be in the best interests of the ratepayers and/or shareholders. Normally based upon my experience with these proceedings we would definitely take a look at the actual impacts of both the original order and/or pending Stipulation and Settlement agreement in order to be able to provide this information to both

our ratepayers and/or shareholders. Attachment 2 of their response does not give the full details that would be provided with normal Earnings Surveillance reports. I have asked very specific questions related to the declassified Earnings Surveillance report (see email dated Monday November 22, 2010 11:25AM). I have asked questions about long term debt cost rates which have not been disclosed with the response in Attachment 2. Usually a full cost of service and full cost of money is provided with any response to the commission. Here it appears that normal operating information that has been released in the past is not being released with this response. The response in Attachment 2 should follow the normal operating report disclosure that is usually made by the company. The same exact information should be released with attachment 2 as in attachment 1 with the release of the declassified Earnings Surveillance report. I am still waiting for answers to my questions regarding the declassified report. It appears that the information provided in attachment 2 does not meet the normal disclosures (Earnings Surveillance reports) that have been made in the past to the Commission and the public record in order for a person with a legal interest to see the impacts of both the original order and pending Stipulation and Settlement agreement. I would think that the interveners would want to ask the same questions to take a look at both impacts before any decision was made. It appears that the Commission and my motion to answer the question leads to additional questioning that might be pertinent to the ruling on these proceedings.

How come the other intervenors did not ask for the release of this information as well to see the impacts of both the original order and pending Stipulation and Settlement agreement?

The following question(s) have to be answered by both the Utility and the Public Service Commission:

- (1) Did any of the intervenors in these ratecase proceedings have access to information that no other party with a legal interest has had access to? If not, then I would think that the other intervenors would want to see both sets of ESR's with and without the pending Stipulation and Settlement agreement.

If so, then this would be "ex parte" communications as outlined for the reasons under Title 5 of the Administrative Procedure Act. This information is not being made part of the public record as required for a formal rulemaking and formal adjudication.

If you take a look at my concerns with "ex parte" communications based upon Federal laws this would be a question that every party with a legal interest should be asking for. This is why I have filed the motion asking for this information as well since it appears that the information provided does not meet the normal disclosures that have been made in the past (Full Earnings Surveillance reports with cost of service and full cost of money) to the Commission.

- Q3. Per pages 30 and 35 of the Company's Form 10-Q for the quarter ended September 30, 2010, the condensed consolidated financial statements reflect the effects of the proposed, but not yet approved, stipulation and settlement in Docket No. 080677-EI. Has FPL included the effects of the proposed stipulation and settlement in any of its filed ESRs for 2010? If so, please identify which month(s) and refile the ESRs excluding the effects of the proposed stipulation and settlement.**
- Q4. Has FPL included the effects of the proposed stipulation and settlement in its actual results of operations in its books and records? Is so, please identify which months and provide the justification for recording the effects of the proposed stipulation and settlement as actual results of operations.**
- A. Yes. Beginning with the financial close of its June 2010 results in October 2010, the Company concluded that approval of the Stipulation and Settlement is probable.² In light of FPL's conclusion, it appropriately adjusted the amortization amount of the theoretical reserve surplus to reflect the amortization that would be appropriate under the Stipulation and Settlement in accordance with GAAP. This approach is reflected in the financial statements that FPL recently released for the period ending September 30, 2010.**

² Given the Staff's October 4, 2010 recommendation that the Stipulation and Settlement be approved; the Commission's recent approval of settlement agreements related to other major investor-owned electric utilities; the endorsement of and support for the Stipulation and Settlement by the Office of Public Counsel, the Attorney General and other key intervenors in FPL's last rate case; and the general benefits to FPL's customers and the Company that would result from approval of the Stipulation and Settlement, FPL concluded that approval of the Stipulation and Settlement is probable.

FPL Response:

5. The Smith Motion makes several references to *public records laws and other laws* that provide access to information of utilities and publicly traded companies. This suggests that Mr. Smith may believe FPL has withheld information from the response to Question 3 on the basis of confidentiality. That is not the case. FPL has withheld nothing in its response to Question 3, or the Staff Data Request generally, because of confidentiality concerns. Moreover, Mr. Smith has full access on the Commission website for Docket No. 100410-EI to all of the information that FPL provided to Staff in its response. None of that information is subject to confidentiality restrictions.

Robert H. Smith Response:

See response above as it relates to normal operating reports (*Earnings Surveillance reports*). Attachment 2 does not provide the same exact information that the normal Earnings Surveillance report provides (*full cost of service and full cost of money*). This motion was based upon reasoning that the release of the information as requested in Question 3 to Staff's data request No. 1 would be pertinent questioning to show the impacts of the original order with/without the pending Stipulation and Settlement agreement. The only aspect of confidentiality is with regard to preventing "ex parte" communications with this case. If any of the intervenors had access to any information that another party with a legal interest did not have access to this would be considered "ex parte" communications and the outcome of the case might not be considered impartial. The concern of impartiality was a concern of Florida Power & Light's as well therefore all communications would have to be made fully transparent and all pertinent questions for any party with a legal interest would have to be answered in order for a party to protect their legal interest.

Mr. Smith's Questions to FPL

6. The Smith Motion poses five numbered questions that apparently are an effort by Mr. Smith to follow up on FPL's response to Staff's Question 3. As discussed above, Mr. Smith is not a party to any of the dockets he cites, and he is not entitled to propound discovery on FPL. Nonetheless, FPL offers the following observations concerning Mr. Smith's questions.

Robert H. Smith Response:

Mr. Butler has indicated that Mr. Smith is not a party to any of the above dockets is not accurate since I am both a ratepayer and a shareholder of the company. As a ratepayer and a shareholder of this company I should be afforded full transparency to protect my legal interests in any rate proceeding as per Section 350.042 (1) of the Florida Statutes. Furthermore based upon Federal preemption, I am requesting this information under Title 5 of §557(d) (1), §557(a), §556, §553(c), §554(a) of the Administrative Procedure Act. Since this would be considered a formal ruling making and formal adjudication I feel that I am within my right's to protect my legal interest to make sure that all pertinent questions are being asked before a ruling is made on the pending Stipulation and Settlement agreement. From a shareholders perspective I am considered a legal owner of the corporation. Based upon my rights as a shareholder I would be afforded a full book inspection to protect my legal rights as a shareholder. I am sure that Florida Power & Light has answered institutional shareholders of Florida Power & Light. There should be no reason why Florida Power & Light would not answer an individual shareholder as well. There are various email requests asking the company to provide the technical accounting data as it pertains to various issues that I have brought up with these proceedings. So far none of these emails from a shareholders perspective have been answered. Some of these questions would be pertinent to the ratecase as well. Since I am a ratepayer and a shareholder of the company I would think I would be entitled to "propound discovery" in order for me to protect my legal interests from both a ratepayer and/or shareholder perspective. As I have indicated in both motions that I have filed with these proceedings both Federal/State laws would provide for the proper due process for a party with a legal interest to be able to ask the appropriate questions to protect their legal interest in these cases. What is interesting with these proceedings is that all three Dockets are really related to the rates being set at the Utility. Any cash rate agreement would have an impact on any of the three Dockets therefore all of these Dockets should have been kept with one proceeding. This is what would be normally required for any type of proceeding in which there is going to be a base rate ruling. Since all three Dockets deal with the cash recovery in rates for the Utility all three dockets are related.

8. Mr. Smith's Questions 1 and 2 ask about what types of information FPL filed in its rate case. Information relevant to those questions is readily available to him from the Commission's website. Specifically, Mr. Smith can access FPL's petition, MFRs and supporting testimony via links in the document filing index for Docket No. 080677-EI on the Commission's website. Those documents provide extensive detail on FPL's rate case filing.

Robert H. Smith Response:

The *only information* available appears to be annual information. I have not seen any monthly information that has been filed on the public docket. The reason for this questioning was related to see if their forecast models would be able to provide the answers to Question 3 in Staff's data request 1. Normally a Utility would be able to provide monthly detail to support the annual information that has been provided in the public Docket. The question asked in Question 1 and 2 are asking specific questions as to whether or not monthly data has been filed including balance sheets, profit and loss statements, cash flow statements and ratios with the filing. These questions should have been answered with a specific yes or no to see if this information has been made available. I do not recall that I have seen any monthly detail from the company. The questions that have been presented should be answered specifically and not just referenced. *There should be no reason why the company would not want to answer both questions 1 and 2.* If monthly data exists, I am sure the company could have provided the analysis with regard to calculating the ESR's in a forecast mode in addition to the actual mode that has been indicated by the their response. Has any of this information been provided to any other party with an interest in these proceedings? If yes, then the same information should be made part of the public record so that any party with a legal interest would have the ability to take a look at the information in order to ask questions to protect their legal interest. If only select parties had access to this information then this might lead to an "ex parte" communications issue as well. This is why the company should address any pertinent question(s) that is being asked by any party with a legal interest in these proceedings. Please reference the Specific Docket/Document number in which the monthly information that I asked about has been made part of the public Docket's.

9. Mr. Smith's Questions 3 through 5 relate to limitations on FPL's "forecast models." Mr. Smith apparently believes that forecast models would be used to generate the monthly ESRs that were the subject of Staff's Question 3. That is not the case, and thus Mr. Smith's questions about forecast models are simply not relevant to Question 3. The monthly ESRs are prepared on the basis of historical, actual data from FPL's accounting records, using FPL's Regulatory Interface System ("RIS"), not on the basis of forecast models. The affidavit of Kim Ousdahl that FPL included as Attachment 1 to its response to the Staff Data Request discusses the RIS and the challenges posed in trying to use it to generate alternative, hypothetical ESRs based on inputs that are different from what is recorded in FPL's accounting records. Ms. Ousdahl's affidavit is readily available to Mr. Smith via the Commission's website.

Robert H. Smith Response:

Mr. Butler's response to this is only partially correct. Yes, they are using the actual historical data from FPL's accounting records to answer question 3. What they are not answering is the fact that since the rate case is based upon their forecast model that was originally filed and their annual cost of service/cost of money calculations have been made with the original ratecase that they have filed, there has to be a forecast model that would be able to be used to substantiate the original order and/or the pending stipulation and settlement agreement. The reluctance to not present the historic actual data based upon the original order would be pertinent to take a look at the impacts of the order since 2010 is almost over. The company used their forecasts to originally ask for the original rate increase that was significantly reduced for various issues. If they are relying on their forecast models to ask for a rate increase then they should be able to generate ESR's based upon their forecast(s). If they expect to receive cash rate relief based upon these forecast models, then they should be able to support their increase with the same type of ESR calculations/Normal Surveillance operating reports that is being completed for their historic actual (2010) accounting data. This is why I have asked questions 3 to 5. They can not only approach the actual ESR calculations with only modeling the pending stipulation and settlement agreement since they have indicated that it was probable. You would have to see if they would be in the same position in 2010 with the original order versus the pending stipulation and settlement agreement. The original order basically kept cash base rates the same. The pending Stipulation and Settlement agreement is going to keep the cash base rates the same with only a couple of caveats. The company is going to be able to control the rate of depreciation over recovery amortization, the company is going to lock the cash rates for the term of the pending stipulation and settlement agreement, the company is going to remove costs from base rates to collect them through another rate recovery clause that the current base rates might have not been adjusted for the decrease

currently (Base rates will include the additional \$18 Million to \$20 million of nuclear uprates costs due to the base rate freeze) and the company is going to be able to control its rate of return which under normal ratecase proceedings, a set rate of return would be set by the commission. If the company is going to have the ability to control the cash base rate(s) recovery for the term of the stipulation and settlement agreement then it should be able to support both the historical accounting and forecast accounting to substantiate why the pending stipulation and settlement agreement is a better deal for both its ratepayers and/ or shareholders versus the original order that has been issued. If the ESR's are finally recalculated to see if the original order would yield the same return on equity as the pending Stipulation and Settlement agreement (2010) then my concerns with regard to the current lock on cash base rates for the term of the Stipulation and Settlement agreement would have merit and all the of my questions should be answered by the company and/or commission. The approval of the pending Stipulation and Settlement agreement would lock cash base rates currently for the term of the stipulation and settlement agreement. If there are any future cash reductions based upon traditional ratemaking through their normal Earnings Surveillance reports that are used to calculate excess earnings, then the customer might not see a reduction for any future cost of service reductions until the next ratecase proceeding. This is why they would have to prepare both presentations (original order/pending stipulation and settlement agreement) in order for any party with a legal interest to have the ability to make sure that what is finally approved is in the best interests of all parties. Unless full transparency is afforded, the possibility exists that only certain parties with these proceedings may have had access to pertinent data to protect their interests. This may lead to the same concerns of impartiality just like Florida Power & Light has indicated that they were concerned with. If Florida Power & Light is concerned with impartiality, then it appears that it would be in their best interest to answer any question that any party with a legal interest has in order to support the pending ruling on the Stipulation and Settlement agreement.

WHEREFORE, Robert H. Smith respectfully requests that Florida Power & Light honor and answer the Motion request in its entirety (*answering all specific questions in the motion*) and that Florida Power and Light answer Staff's Data request No. 1, Question 3 and respectfully requests the Commission and/or Florida Power and Light Company to allow Robert H. Smith to inspect and examine the answer to Staff's Data request No. 1, Question 3. *As explained above, the full answer to the motion would be required in order to serve as normal due diligence in order to substantiate any ruling with these types of proceedings. This will provide any person with a legal interest the "full right to be heard according to law" before any ruling is made on the pending Stipulation and Settlement agreement.*

Respectively submitted electronically (email), Tuesday December 7th, 2010 to the listed parties above and electronically filed to filings@psc.state.fl.us on Tuesday December 7th, 2010 as outlined per Florida Public Service Commission Electronic Filing Requirements.

/S Robert H. Smith

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