

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In Re: Nuclear Power Plant
Cost Recovery Clause

Docket No. 140009-EI
Filed: July 3, 2013

**THE FLORIDA INDUSTRIAL POWER USERS GROUP'S
AMENDED PREHEARING STATEMENT**

The Florida Industrial Power Users Group (FIPUG), pursuant to the First Order Revising Order Establishing Procedure in this docket, Order No. PSC-14-0082-PCO-EI, issued on February 4, 2014, files its Prehearing Statement.

A. APPEARANCES:

JON MOYLE, JR.
KAREN A. PUTNAL
Moyle Law Firm, P.A.
118 North Gadsden Street
Tallahassee, FL 32301

Attorneys for the Florida Industrial Power Users Group

B. WITNESSES AND EXHIBITS:

All witnesses and exhibits listed by other parties in this proceeding.

C. STATEMENT OF BASIC POSITION:

FIPUG supports the development of cost effective, reasonable and prudent energy sources to serve Florida consumers. Utilities seeking to provide nuclear power have the burden to demonstrate that the nuclear projects that are the subject of this hearing are feasible and the most reasonable and cost-effective way to serve ratepayer needs. The Commission must bear in mind that, at the end of the day, it is the consumers who bear the cost burden of nuclear projects.

DUKE

Duke with respect to Duke Energy of Florida ("Duke"), FIPUG supports efforts to have the customers receive a credit of \$54,127,100 for equipment that never materialized, but for which customers were "charged" by Duke. Specifically, Duke sought, and the Commission approved the sum of \$54,127,100 as being appropriately included in the customers' rates.

As to Duke's Levy Nuclear Project, so long as PEF's filing is consistent with the parties' settlement, FIPUG supports the company's position on these issues.

FPL

FIPUG continues to question whether the FPL Turkey Point Nuclear Project will be constructed for the monies suggested by FPL and whether the new nuclear units will achieve commercial operation within the timeframe forecast by FPL. How much the project is projected to cost and when it is expected to serve customers, and whether those projections are reasonable, are two important factual issues. FIPUG takes the position that the costs will be more than projected and the nuclear project will be available to serve ratepayers later than forecast. FIPUG has properly raised these issues as disputed issues of fact in this proceeding, a proceeding governed in significant part by sections 120.57 and 120.569, Florida Statutes.

D. STATEMENT OF ISSUES AND POSITIONS:

Duke Energy Florida, Inc. (DEF) Levy Project

ISSUE 1: Should the Commission find that during the years 2012 and 2013, DEF's project management, contracting, accounting and cost oversight controls were reasonable and prudent for the Levy Units 1 & 2 project?

FIPUG: No position at this time.

ISSUE 2: Has DEF reasonably accounted for COL pursuit costs pursuant to paragraph 12(b) of the 2013 revised and restated stipulation and settlement agreement?

FIPUG: Adopt position of OPC.

ISSUE 2A: What jurisdictional amounts should the Commission approve as DEF's final 2012 and 2013 prudently incurred cost for the Levy Units 1 & 2 project?

FIPUG: No position at this time.

ISSUE 3: Should the Commission approve DEF's Levy Project exit and wind down costs and other sunk costs as specifically proposed for recovery or review in this docket?

FIPUG: Potential, future wind-down or long lead equipment disposition costs or credits that cannot be reasonably quantified at this time should not be approved, and the Commission should expressly state that it is taking no action related to such disposition costs or credits at this time.

ISSUE 4: What action, if any, should the Commission take in the 2014 hearing cycle with respect to the \$54,127,100 in Long Lead Equipment milestone payments, previously recovered from customers through the NCRC, which were in payment

for Turbine Generators and Reactor Vessel Internals that were never manufactured?

FIPUG: The Commission should order that a credit of \$54,127,100 be provided to ratepayers as detailed by OPC.

ISSUE 5: What restrictions, if any, should the Commission place at this time on DEF's attempts to dispose of long lead equipment?

FIPUG: Adopt position of OPC.

DEF CR3 Uprate Project

ISSUE 6: Should the Commission find that during the years 2012 and 2013, DEF's project management, contracting, accounting and cost oversight controls were reasonable and prudent for the Crystal River Unit 3 Uprate project?

FIPUG: No position at this time.

ISSUE 7: What jurisdictional amounts should the Commission approve as DEF's final 2012 and 2013 prudently incurred cost for the Crystal River Unit 3 Uprate project?

FIPUG: No position at this time.

ISSUE 8: Should the Commission approve DEF's Crystal River Unit 3 Uprate Project exit and wind down costs and other sunk costs as specifically proposed for recovery or review in this docket?

FIPUG: No position at this time.

DEF Ultimate Issue

ISSUE 9: What is the total jurisdictional amount to be included in establishing DEF's 2015 Capacity Cost Recovery Clause Factor?

FIPUG: Adopt position of OPC.

Florida Power & Light Company (FPL) Turkey Point (TP) 6 & 7 Project

ISSUE 10: Should the Commission approve what FPL has submitted as its 2014 annual detailed analysis of the long-term feasibility of completing the Turkey Point Units 6 & 7 project, as provided for in Rule 25-6.0423, F.A.C.?

FIPUG: No.

ISSUE 10A: What is the current total estimated all-inclusive cost (including AFUDC and sunk

costs) of the proposed Turkey Point Units 6 & 7 nuclear project and is that estimated cost reasonable?

FIPUG:

FPL's current estimated costs are low and the ultimate cost of the proposed Turkey Point units 6 & 7 will likely exceed the cost figure FPL projected in last year's proceeding, which was a range from \$12.7 billion to \$18.5 billion.

The issue of how much FPL's nuclear project is going to cost ratepayers has been one that has been in this docket for a number of years, and should remain. Presently, FPL and FIPUG have a disagreement, a disputed issue of material fact, as to whether the Commission should also consider whether FPL's projected cost figure is "reasonable".

FPL has taken the position that FIPUG is asking the "Commission to make a factual determination and a reasonableness finding, neither of which are supported by applicable Florida law or Commission rule." See FPL Prehearing Statement at page 9. Respectfully, pursuant to the state's Administrative Procedures Act, fact finding is part and parcel of what the Commission does; the Commission makes factual determinations when there is a disputed issue of material fact. FPL overlooks the requirements of section 120.57, Florida Statutes, which govern the Commission's hearing in this case. The Florida Supreme Court, relying expressly on s. 120.57, F.S. has stated that, "Both by statute¹ and its own rules² the PSC is required to make findings of fact in rate proceedings." *International Minerals & Chemical Corp. v. Mayo* 336 So.2d 548, 552-553 (Fla. 1976). This is a rate proceeding in which FPL is asking the Commission to authorize the recovery of rates for its Turkey Point nuclear project. The Court further stated that "The requirement of explicit fact findings makes for more careful consideration by the Commission, helps assure that this Court does not usurp the PSC's fact finding prerogatives, and otherwise facilitates review of Commission orders by this Court. The more detailed the PSC's findings of fact are, the more readily these important purposes are served." *Mayo*, supra, at 553.

FPL's exclusive reliance on section 366.93, Florida Statutes, is misplaced, and ignores the state's administrative procedures law, Chapter 120, Florida Statutes. Furthermore, Commission Rule 25-6.0423(c)1c, Florida Administrative Code, suggest that the Commission is interested in, and has authority to examine a nuclear project's forecast cost for subsequent years. The rule states, in pertinent part, that:

1. Each year, pursuant to the order establishing procedure in the annual cost recovery proceeding, a utility shall submit for Commission review and approval,

¹ Fla.Stat. s 120.57(1)(b)8 (1975).

² Fla.Admin.Code, ch. 25-2.116(5).

as part of its cost recovery filings:

c. Projected Costs for Subsequent Years....

In sum, FIPUG has put forward an issue that is undoubtedly material: how much will FPL's proposed nuclear power plant cost and is that cost estimate reasonable. This issue as framed by FIPUG, including the reasonableness determination, should remain as proposed.

ISSUE 10B: What is the current estimated planned commercial operation date of the planned Turkey Point Units 6 & 7 nuclear facility and is that estimated commercial operation date reasonable?

FIPUG: The current estimated planned commercial operation dates of the planned Turkey Point Units 6 & 7, 2022 and 2023 respectively, are overly optimistic. The actual commercial operation dates of these units will occur later in time than these projected dates, if at all.

The issue of when FPL's nuclear project is going to serve ratepayers has been one that has been in this docket for a number of years, and should remain. Presently, FPL and FIPUG have a disagreement, a disputed issue of material fact, as to whether the Commission should also consider whether FPL's projected in-service commercial operation dates are "reasonable".

FPL has taken the position that FIPUG is asking the "Commission to make a factual determination and a reasonableness finding, neither of which are supported by applicable Florida law or Commission rule." See FPL Prehearing Statement at page 9. Respectfully, pursuant to the state's Administrative Procedures Act, fact finding is part and parcel of what the Commission does; the Commission makes factual determinations when there is a disputed issue of material fact. FPL overlooks the requirements of section 120.57, Florida Statutes, which govern the Commission's hearing in this case. The Florida Supreme Court, relying expressly on s. 120.57, F.S. has stated that, "Both by statute³ and its own rules⁴ the PSC is required to make findings of fact in rate proceedings." *International Minerals & Chemical Corp. v. Mayo* 336 So.2d 548, 552-553 (Fla. 1976). This is a rate proceeding in which FPL is asking the Commission to authorize the recovery of rates for its Turkey Point nuclear project. The Court further stated that "The requirement of explicit fact findings makes for more careful consideration by the Commission, helps assure that this Court does not usurp the PSC's fact finding prerogatives, and otherwise facilitates review of Commission orders by this Court. The more detailed the PSC's findings of fact are, the more readily these important purposes are served." *Mayo*, supra,

³ Fla.Stat. s 120.57(1)(b)8 (1975).

⁴ Fla.Admin.Code, ch. 25-2.116(5).

at 553.

FPL's exclusive reliance on section 366.93, Florida Statutes, is misplaced, and ignores the state's administrative procedures law, Chapter 120, Florida Statutes.

In sum, FIPUG has put forward an issue that is undoubtedly material: when will FPL's proposed nuclear power plant be available to serve FPL's customers and is that projection reasonable. This issue as framed by FIPUG, including the reasonableness determination, should remain as proposed.

ISSUE 11: Should the Commission find that FPL's 2013 project management, contracting, accounting and cost oversight controls were reasonable and prudent for the Turkey Point Units 6 & 7 project?

FIPUG: No position at this time.

ISSUE 12: What jurisdictional amounts should the Commission approve as FPL's final 2013 prudently incurred costs and final true-up amounts for the Turkey Point Units 6 & 7 project?

FIPUG: No position at this time.

ISSUE 13: What jurisdictional amounts should the Commission approve as reasonably estimated 2014 costs and estimated true-up amounts for FPL's Turkey Point Units 6 & 7 project?

FIPUG: No position at this time.

ISSUE 14: What jurisdictional amounts should the Commission approve as reasonably projected 2015 costs for FPL's Turkey Point Units 6 & 7 project?

FIPUG: No position at this time.

FPL Extended Power Uprate (EPU) Project

ISSUE 15: Should the Commission find that FPL's 2013 project management, contracting, accounting and cost oversight controls were reasonable and prudent for the Extended Power Uprate project?

FIPUG: No position at this time.

ISSUE 16: What jurisdictional amounts should the Commission approve as FPL's final 2013 prudently incurred costs and final true-up amounts for the Extended Power Uprate project?

FIPUG: No position at this time.

FPL Ultimate Issue

ISSUE 17: What is the total jurisdictional amount to be included in establishing FPL's 2015 Capacity Cost Recovery Clause factor?

FIPUG: This is a fallout amount derived from other substantive issues.

E. STIPULATED ISSUES:

None at this time.

F. PENDING MOTIONS:

None other than motions for confidential protective orders.

G. STATEMENT OF PARTY'S PENDING REQUESTS OR CLAIMS FOR CONFIDENTIALITY:

None.

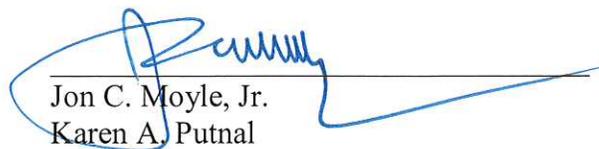
H. OBJECTIONS TO QUALIFICATION OF WITNESSES AS AN EXPERT:

No witness has been tendered as an expert witness in this case. FIPUG reserves the right to object to the qualifications of any expert should any party designate a witness as an expert and offer expert opinion testimony.

I. STATEMENT OF COMPLIANCE WITH ORDER ESTABLISHING PROCEDURE:

There are no requirements of the Order Establishing Procedure with which the Florida Industrial Power Users Group cannot comply at this time.

Dated this 3rd day of July 2014.



Jon C. Moyle, Jr.

Karen A. Putnal

Moyle Law Firm, P.A.

118 North Gadsden Street

Tallahassee, Florida 32301

Telephone: (850) 681-3828

Facsimile: (850) 681-8788

jmoyle@moylelaw.com

kputnal@moylelaw.com

Attorneys for Florida Industrial Power Users Group

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of FIPUG's Amended Prehearing Statement, was served by Electronic Mail on this 3rd day of July 2014, to the following:

J. Michael Walls
Blaise N. Gamba
Matthew Bernier
Carlton Fields Law Firm
Post Office Box 3239
Tampa, Florida 33601-3239

Jeremy L. Susac
Real Energy Strategies Group
113 South Monroe Street
Tallahassee, FL 32301

Matthew Bernier
Duke Energy.
106 East College Avenue, Suite 800
Tallahassee, FL 32301

Bill Newton
Florida Consumer Action Network
3006 W Kennedy Blvd. Ste B
Tampa, FL 33609

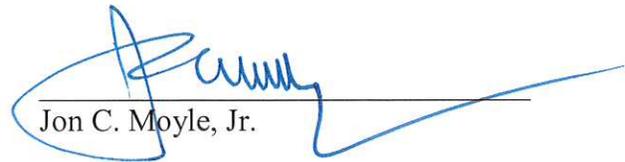
James W. Brew
F. Alvin Taylor
Brickfield, Burchette, Ritts & Stone, P.C.
1025 Thomas Jefferson Street, NW
Eighth Floor, West Tower
Washington, DC 20007-5201

J. R. Kelly
Charles Rehwinkel
Joseph McGlothlin
Erik L. Saylor
Office of Public Counsel
c/o The Florida Legislature
111 West Madison Street, Room 812
Tallahassee, Florida 32399

John T. Burnett
R. Alexander Glenn
Progress Energy Service Company, LLC
Post Office Box 14042
St. Petersburg, Florida 33733-4042

Robert H. Smith
11340 Heron Bay Blvd. #2523
Coral Springs, FL 33076

Bryan S. Anderson
Jessica A. Cano
Florida Power & Light Co.
700 Universe Boulevard
Juno Beach, Florida 33408-0420



Jon C. Moyle, Jr.