

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Fuel and purchased power  
cost recovery clause and generating  
performance incentive factor.

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Docket No. 140001-EI  
Filed: November 5, 2014

**FLORIDA INDUSTRIAL POWER USERS GROUP  
COORECTED MOTION TO STRIKE FPL'S REQUEST TO  
ESTABLISH GUIDELINES RELATED TO OIL AND GAS  
EXPLORATION AND PRODUCTION AND ACCOMPANYING TESTIMONY**

**INTRODUCTION**

1. The Florida Industrial Power Users Group (FIPUG) moves to strike the request of Florida Power and Light Company (FPL) that the Commission establish guidelines related to future oil and gas exploration and production projects, and to strike pre-filed testimony related to those guidelines. The grounds for the motion are as follows:

**BACKGROUND**

2. Docket number 14-0001 EI is the annual clause proceeding which provides utilities with a forum to seek recovery for fuel and purchased power cost expenses. In this docket, on June 25, 2014, FPL filed a "Petition" which sought the Commission's review and approval of a specific oil and gas exploration and production project commonly known as the Woodford Project. In its Petition, FPL also asked the Commission to consider and adopt "guidelines" that would apply to future oil and gas exploration and production projects.

3. Specifically, FPL asks the Commission in its petition to "establish guidelines under which FPL could participate in future gas reserve projects and recover their costs through the Fuel Clause without prior Commission approval, subject to the Commission's established

process for reviewing fuel-related transactions in Fuel Clause proceedings.” FPL Petition, page 1.

4. On August 22, 2014, this Commission entered Procedural Order, Order No. 14-0439-PCO-EI, in which it acknowledged that FPL’s Petition raised “novel” issues. This Order stated in pertinent part that “FPL’s June 25 petition is a case of first impression that will impact the Commission’s consideration of gas reserves on a going forward basis.” FPL’s Petition and its request that the Commission adopt guidelines for future oil and gas projects seeks a Commission decision that, if granted, could have considerable impact on ratepayers not just of FPL, but of other utilities who may decide to likewise venture into the oil and gas exploration and production business. This future impact is a fact expressly recognized by the Order Establishing Procedure.

#### **ARGUMENT**

5. This potentially far-reaching policy decision, namely, whether to permit FPL to venture into the oil and gas business in Oklahoma, has significant implications for FPL, its ratepayers and other Florida-based ratepayers and utilities. In particular, the question of whether to adopt and approve “guidelines” or rules should not be rushed, should not be considered in this docket, and should more appropriately be considered, if warranted, in a rulemaking proceeding as set forth in chapter 120, Florida Statutes.

6. The Florida Supreme Court has recognized that rulemaking is the preferred practice if the impact of a particular policy would be industry-wide. *City of Tallahassee v. Florida Public Service Commission*, 433 So.2d 505, 508 (Fla. 1983 (“We have also suggested that rulemaking is preferable if the impact of the rule would be industry-wide. *City of Plant City v. Mayo*, 337 So.2d 966 (Fla.1976)”).

7. Specifically, section 120.54(1), Florida Statutes, provides in pertinent part that rulemaking is not a matter of agency discretion, that each agency statement defined as a rule by s. 120.52 shall be adopted by rulemaking as soon as feasible and practicable, and that rulemaking is presumed feasible unless certain conditions exist and are proven.

8. The request to approve guidelines related to future oil and gas exploration and production is particularly troubling in that such guidelines will likely have the force and effect of rules. This point is illustrated by the following example: If the Commission grants FPL's Petition in its entirety, including the proposed oil and gas exploration and production "guidelines," the Commission will be hard-pressed to deny a petition from another similarly situated Florida-based investor-owned utility which seeks PSC approval of the same "guidelines." While FPL may suggest that no other utility is requesting Commission approval of oil and gas operations at this time, and thus the oil and gas exploration and production "guidelines" are not really tantamount to rules, FPL cannot in good faith suggest that the proposed guidelines, if adopted, will not be considered by FPL, or other regulated entities, to be Commission statements that "implement policy" or "describe the procedure or practice requirements" of the Commission related to future oil and gas projects. Both of these actions are within the statutory definition of a rule. These "guidelines" will likely have the effect of rules, as FPL will undoubtedly suggest that the "guidelines" are binding upon the Commission. Accordingly, the due process notice and participation provisions of formal rulemaking should be employed, and the "guidelines" issue removed from this proceeding.

9. It should also be remembered that FPL's strategy in this case is to not only seek approval of the Woodford project, but using the "guidelines," bind this Commission and future Commissions to guidelines which allow FPL to invest up to \$750 million dollars per year in oil and gas exploration and production projects. This Commission, as part of the legislative branch,

should not bind future Commissions in this way. *Neu v. Miami Herald Publishing Co.*, 462 So2d. 821, 824 (Fla. 1985). If this is the path to be travelled, other potentially affected parties, like PCS Phosphate, (who is attempting to be heard on the controversial oil and gas exploration and production issue despite FPL's contention that PCS Phosphate does not have standing), should be given a full and complete opportunity to present their arguments and evidence, preferably in the context of formal rulemaking.

10. FIPUG is authorized to represent that FPL opposes this motion. FIPUG has not been able to ascertain the respective positions of the other parties.

11. In sum, the better course of action and "preferred practice" as recognized by the Florida Supreme Court is to remove the rule/guideline issue and related testimony from this proceeding and pursue rulemaking, if warranted, following the decision on the specific Woodford project that is pending before the Commission.

WHEREFORE, for the foregoing reasons, FIPUG respectfully requests that the Commission strike the portion of FPL's Petition which requests the PSC to establish "guidelines" related to future oil and gas exploration and production projects, and to strike pre-filed testimony related to those "guidelines."

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**CERTIFICATE OF SERVICE**

**I HEREBY CERTIFY** that a true and correct copy of the foregoing motion was furnished to the following by Electronic Mail, on this 5th day of November, 2014:

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