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BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Fuel and purchased power cost recovery clause and generating performance incentive factor. ______________________________/	Docket No. 150001-EI Filed: November 13, 2015

THE FLORIDA INDUSTRIAL POWER USERS GROUP'S POST-HEARING STATEMENT OF ISSUES AND POSITIONS AND POST-HEARING BRIEF

The Florida Industrial Power Users Group (FIPUG), by and through its undersigned counsel, files this Post-Hearing Statement of Issues and Positions and Post-Hearing Brief in the above-styled matter.

BASIC POSITION AND SUMMARY

Utility hedging programs should be discontinued for many reasons, as detailed below in FIPUG's brief. In sum, the stated goal of utility hedging programs, to reduce price volatility, provides little tangible benefit to consumers. The only articulated "benefit" to ratepayers of the hedging program is "a reduction of price volatility", which translates into fewer mid-course fuel clause adjustments than might otherwise be experienced. Fewer mid-course fuel clause adjustments have hardly benefitted customers, particularly when considering that "the reduction in price volatility" has cost consumers nearly $6 billion dollars (5.792 billion) since the hedging program's inception in 2002. FIPUG members would rather "pay at the pump" and bear the risk of natural gas market prices in the same way consumers bear the market price risk of airline tickets, milks, egg, meat, cereal or gasoline.

FIPUG understands that natural gas prices may increase in the future and will not second guess the hoped for Commission decision to discontinue the natural gas hedging program.

Consumer groups are united in their request that hedging be discontinued. The Commission should grant this request and discontinue natural gas hedging.

Florida Power & Light Company (FPL)

ISSUE 1D: Is it in the consumers' best interest for the utilities to continue natural gas financial hedging activities?

FIPUG: No. Hedging should be discontinued.

ISSUE 1E: What changes, if any, should be made to the manner in which electric utilities conduct their natural gas financial hedging activities?

FIPUG: Hedging should be discontinued.

Duke Energy Florida, Inc. (DEF)

ISSUE 2A: Should the Commission approve as prudent DEF's actions to mitigate the volatility of natural gas, residual oil, and purchased power prices, as reported in DEF's April 2015 and August 2015 hedging reports?

FIPUG: Hedging should be discontinued.

ISSUE 2B: Should the Commission approve DEF's 2016 Risk Management Plan?

FIPUG: Hedging should be discontinued.

Florida Power & Light Company (FPL)

ISSUE 3A: Should the Commission approve as prudent FPL's actions to mitigate the volatility of natural gas, residual oil, and purchased power prices, as reported in FPL's April 2015 and August 2015 hedging reports?

FIPUG: Hedging should be discontinued. Otherwise, adopt the position of OPC.

ISSUE 3B: Should the Commission approve FPL's 2016 Risk Management Plan?

FIPUG: Hedging should be discontinued. Otherwise, adopt the position of OPC.

ISSUE 3K: What costs are appropriate for FPL's Woodford natural gas exploration and production project for recovery through the Fuel Clause?

FIPUG: None.

Florida Public Utilities Company (FPUC)

ISSUE 4A: Should FPUC be permitted to recover the cost (depreciation expense, taxes, and return on investment) of building an interconnection between FPL's substation and FPUC's Northeast Division through the fuel recovery clause?

FIPUG: No. Such costs should be recovered in base rates, not through the fuel clause.

ISSUE 4B: Should FPUC's request to recover consulting and legal fees through the fuel clause be approved?

FIPUG: No. Such costs should be recovered in base rates, not through the fuel clause. Furthermore, any lobbying-type expenses should not be recovered.

Gulf Power Company

ISSUE 5A: Should the Commission approve as prudent Gulf's actions to mitigate the volatility of natural gas, residual oil, and purchased power prices, as reported in Gulf's April 2015 and August 2015 hedging reports?

FIPUG: No. Hedging should be discontinued.

ISSUE 5B: Should the Commission approve Gulf's 2016 Risk Management Plan?

FIPUG: Hedging should be discontinued.

Tampa Electric Company

ISSUE 6A: Should the Commission approve as prudent TECO's actions to mitigate the volatility of natural gas, residual oil, and purchased power prices, as reported in TECO's April 2015 and August 2015 hedging reports?

FIPUG: No. Hedging should be discontinued.

ISSUE 6B: Should the Commission approve TECO's 2016 Risk Management Plan?

FIPUG: Hedging should be discontinued.

Discussion of Issue 1D -3B and 5A- 6B
Hedging

For the reasons set forth below, the Commission should order the state's investor-owned utilities to discontinue hedging and not approve the 2015 utility hedging plans submitted for

Commission review and approval. Alternatively, if hedging continues, the Commission should, as done by the Georgia Public Service Commission, direct staff to actively supervise utility hedging in an effort to minimize customer losses. Tr. 694-695

The Merriam -Webster Online Dictionary defines hedging as " a means of protection or defense (as against financial loss)." Since the inception of the Commission-approved hedging program in 2002, hedging has resulting in combined customer losses of nearly $6 billion dollars. FPL alone, which serves approximately half of the state's homes and businesses, has accounted for $4 billion dollars in customer losses. Tr. 431-432. If one accepts the Merriam –Webster definition of hedging, namely a protection or defense against financial loss, the utilities' hedging programs have failed spectacularly. The direct result of the hedging programs is a loss of almost $6 billion dollars, the exact opposite of fending off financial loss. The time has come to discontinue hedging.

Hedging is for the use and benefit of customers; customers want hedging discontinued; customer wishes should be respected.

All agree that hedging is in place to "benefit" the ratepayers. Ratepayers (Office of Public Counsel, the Florida Industrial Power Users Group, the Florida Retail Federation and PCS Phosphate) are united in their collective request that hedging cease immediately. While the utilities disagree with the consumers' unified position, the utilities admit that they do not earn a return or other monies on hedging activities[1]. Thus, the hedging issue is not like a rate increase dispute, with the Commission attempting to strike a fair balance between competing financial interests of ratepayers and a requesting utility. All of the "skin in the game" in the pending

[1] FPL presently earns a return on its investment in the Woodford project, regardless of whether ratepayers save or lose money on Woodford natural gas. To date, ratepayers have lost money on Woodford natural gas; tellingly, ratepayers are expected to lose more money in 2016 from the Woodford natural gas "physical" hedge. Tr. 427-428, 448

hedging contest belongs to ratepayers and all ratepayers simply want the game to cease. If some consumers supported the continuation of hedging, the Commission's decision would be more challenging. However, that is not the case. Hedging should be discontinued.

Hedging losses and gains have not offset each other, an important Commission <u>expectation when approving utility hedging programs that was never realized</u>

A key expectation of the Commission approved hedging program, that losses and gains would offset each other, has not been realized.

When approving utility hedging plans during the 2007 fuel clause proceeding, the Commission stated in pertinent part:

> "Hedging program (sic) are designed to assist in managing the impacts of fuel price volatility. Within any given calendar period, hedging can result in gains or losses. Over time, gains and losses generally are expected to offset one another."

Order No. PSC-0030-FOF-EI, Docket No. 070001-EI, page 4. This has not come to pass over the thirteen (13) years that the hedging program has been in existence. Customers are approximately 6 billion dollars in the hole. Overall hedging losses have been a one way losing street when measured against overall hedging gains. FPL's cumulative hedging loses are 4 billion dollars. Tr. 431-432; Duke's cumulative hedging losses are 1.2 billion dollars. Tr. 474-475; Gulf's cumulative hedging losses are 171 million dollars. Tr. 686; TECO's cumulative hedging losses are 421 million dollars. Tr. 761; the utility cumulative total is 5.792 Billion dollars. The evidence is clear that hedging losses far exceed hedging gains. The disproportionate hedging losses are surely a "red flag". Ex. 121, p.14. The response to the "red flag" should be to remove customers from harm's way and discontinue utility natural gas hedging.

The suggestion that, if the Commission gives utility hedging more time, just maybe, someday, hedging gains will offset hedging losses is not supported by credible evidence or logic.

Since time has no end, the argument that hedging losses may someday be offset by hedging gains, if accepted by the Commission, becomes a perpetual winning argument for hedging advocates. For example, assume that the hedging program continues, thirteen (13) more years pass, and in 2028, the cumulative total hedging losses are 12 billion dollars. Hedging proponents, namely the utilities, lament the huge losses, but simply point out that more time is needed for the expected future gains to offset the 12 billion dollars in cumulative losses. Please ensure that this hypothetical does not come to pass. Now is the time to stop the hedging financial bleeding.

Reducing volatility by hedging is an ill-measured certainty that has little tangible correlation to customer benefits

The only reason the utilities contend natural gas hedging should continue is to reduce fuel volatility. Tr. 443, 690, 696. Consumers are accustomed to market price changes, volatile or otherwise, when conducting their daily business in unregulated markets. The price of airline tickets typically increase significantly near Thanksgiving, the December holiday season and during the summer. Consumers cope. The price of eggs, milk, meat, and cereal fluctuates, sometimes significantly, based on agriculture conditions. Customers cope. The price of gasoline varies considerably over time. Consumers cope. Similarly, customers will cope if utility hedging ceases.

Finally, customer benefits associated with "reduced fuel volatility" are intangible at best. Some utility witnesses testified that they do not measure the degree to which fuel volatility has been reduced, or not, by the respective utility's hedging program; Tr. 444, 494, 498. OPC witness Lawton pointed out that the reduced volatility over a 19 year period was a whopping 1%, from 5% percent to 4%. Tr. 884-885. Gulf witness Ball said customer costs are not considered when evaluating the success or failure of the hedging program; Tr. 690. Furthermore, the only

tangible result of the "reduced fuel volatility" benefit are fewer mid-year corrections over 13 years than otherwise would have occurred.[2] Tr.445-446. That result largely begs the question: to what end? A downward adjustment to the customers' benefit is viewed more favorably than an upward adjustment. However, at the end of the day, the customer pays for the cost of fuel as a pass through cost. Had there been no hedging, there may have been more frequent fuel clause factor adjustments, up and down; however, there would not have been a cumulative loss of nearly 6 billion dollars that customers funded largely to have "less volatility" and fewer fuel clause adjustments. A cost-benefit analysis which touts "reduced volatility" and fewer adjustments to the fuel factor over time is of marginal customer benefit, irrespective of the overall hedging losses or gains. However, when considering the magnitude of the hedging losses since the program's inception, a cost benefit analysis should lead to the inescapable conclusion that the hedging program costs greatly outweigh the benefits.

FIPUG members prefer to "pay at the pump" and
assume the risk of utilities not financially hedging natural gas

Some have suggested that customers may change their minds about hedging if market conditions change and natural gas prices climb. FIPUG recognizes this is a risk, and accepts it. Assuming investor owned utilities employ an appropriate fuel purchasing strategy, FIPUG will pay market prices, i.e., "pay at the pump", for natural gas used to generate electricity. FIPUG will not second guess the Commission's hoped for decision that hedging be discontinued. To the contrary, it will applaud such action which acts to "stop the financial bleeding" and move forward. If natural gas market prices rise precipitously, something that is not expected to happen

[2] A standard deviation metric, defined as "a measure of the spread of distribution, a collection of values, and the greater the standard deviation, the wider the spread is relative to the average, the mean. So a smaller standard deviation means less variation.", is hardly well understood or meaningful to most ratepayers. Tr. 773.

based on expert forecasts, so be it.

Discussion on Issue 3K
Woodford Costs

As detailed below, FIPUG maintains that the Commission lacks jurisdiction to authorize FPL to use ratepayer funds to invest in the Woodford natural gas project in Oklahoma. This issue is presently before the Florida Supreme Court in SC15-95, Case Number.

Administrative bodies or agencies created by the Legislature, including the Commission, are creatures of statute. See *Advisory Opinion to the Governor* 223
So.2d 35 (Fla. 1969) Thus, the Commission's powers, duties and authority are limited to those that are conferred expressly or impliedly by statute. See *City of Cape Coral v. GAC Utilities, Inc. of Florida*, 281 So.2d 493, 496 (Fla 1973); *City of West Palm Beach v. Florida Public Service Commission*, 224 So.2d 322, 325 (Fla.1969). Any reasonable doubt as to the lawful existence of a particular power that is being exercised by the Commission must be resolved against the exercise of the power in question. *Southern Armored Car Service, Inc. v. Mason*, 167 So.2d 848, 850 (Fla. 1964); *Lee County Elec. Co-op., Inc. v. Jacobs*, 820 So.2d 297, 300 (Fla. 2002); "The Legislature of Florida has never conferred upon the Public Service Commission any general authority to regulate public utilities." City of Cape Coral, supra, at 496.

The Legislature's statutory provision squarely addressing the Commission's jurisdiction, s. 366.04 F.S., is a limitation on the Commission's power. Indeed, the Commission's jurisdictional statute is quite specific regarding the Commission's jurisdiction. In sum, the Legislature has provided the Commission with specific jurisdiction over public utilities that provide electric service to supervise and regulate the following matters:

- rates and service;
- the assumption of liabilities and obligations as a guarantor, endorser or surety;

- the issuance and sale of securities;
- uniform systems and classification of accounts;
- rate structure;
- electric power conservation;
- the approval of or resolution of disputes regarding territorial agreements between utilities;
- the filing of reports as may be necessary to exercise its jurisdiction;
- the planning, development and maintenance of a coordinated electric power grid to assure an adequate and reliable source of energy for operational and emergency purposes in Florida;
- the uneconomic duplication of electric generation, transmission and distribution facilities; and
- the adoption of safety standards for transmission and distribution facilities, including the adoption of standards promulgated by the National Electric Safety Code (ANSI C2).

See s. 366.04 F.S.

If the Legislature had envisioned an expansive jurisdictional construct, it surely would have said that the Commission has plenary jurisdiction to consider all matters affecting a public utility's business operations. It did not do so. Instead, the Legislature provided a detailed listing of the specific matters over which the Commission has jurisdiction.

Statutory review is assisted by the canon of statutory construction "expression unius est exclusion alterius" or "to express or include one thing implies the exclusion of the other." *1000 Friends of Florida, Inc. v. Palm Beach County* 69 So.3d 1123, 1127 (Fla. 4th DCA 2011) citing *Black's Law Dictionary* (9th ed. 2009). Thus, when reading the Commission's jurisdictional

statute as a whole, the Legislature clearly did not intend to implicitly vest the Commission with unfettered or broad jurisdiction.

In *Lee County Elec. Co-op., Inc. v. Jacobs*, *supra*, this Court noted that the Commission held "that the statutes do not 'expressly indicate that this Commission has jurisdiction to prescribe a wholesale rate structure for a rural electric cooperative.'" Accordingly, the Commission found, and this Court agreed with the Commission's reasoning, that it did not have jurisdiction to act absent express statutory language. *Supra.* The same conclusion should be reached in this case and monies sought for Woodford expenditures should not be allowed since the authority to permit such recovery is beyond the Commission's jurisdiction.

Discussion on Issue 4A-4B

Transmission Costs Should Not Be Recovered Through the Fuel Clause; Costs for equipment that will not be placed into service and "used and useful" until 2018 are also not appropriately recovered through the fuel clause

The Commission should not permit Florida Public Utilities to recover transmission costs through the fuel clause. Doing so is an unwarranted and unauthorized expansion of the fuel clause. Furthermore, the project in question will not be "used and useful" until 2018, two years after the customers are being asked to pay for it. Tr. 569. There is no statutory authority for this type of advance cost recovery and the Commission does not have jurisdiction to permit this recover. FIPUG's jurisdictional arguments set forth above, *infra*, are incorporated by reference.

WHEREFORE, for the foregoing reasons, the Commission should discontinue the utility hedging program, disallow Woodford costs, and disallow costs related to FPUC's transmission interconnection request.

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing response was furnished to the following by Electronic Mail, on this 13th day of November, 2015:

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