

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In Re: Nuclear Power Plant
Cost Recovery Clause

Docket No. 160009-EI
Filed: May 16, 2016

**THE FLORIDA INDUSTRIAL POWER USERS GROUP'S
COMMENTS IN OPPOSITION TO FPL'S RULE WAIVER REQUEST**

The Florida Industrial Power Users Group ("FIPUG"), pursuant to section 120.542(6), Florida Statutes, and Rule 28-104.003, Florida Administrative Code ("F.A.C"), files comments in opposition to the rule waiver request filed by Florida Power & Light Company ("FPL") asking the Florida Public Service Commission ("Commission" or "PSC") to forgive compliance with Commission Rule 25-6.0423(6)(c)5, F.A.C., the rule which requires a utility seeking to recover nuclear costs from customers to submit annually a feasibility study for the Commission's review and consideration.

The Commission rule for which FPL seeks a waiver states in pertinent part:

Along with the filings required by this paragraph, each year a utility shall submit for Commission review and approval a detailed analysis of the long-term feasibility of completing the power plant. Such analysis shall include evidence that the utility intends to construct the nuclear or integrated gasification combined cycle power plant by showing that it has committed sufficient, meaningful, and available resources to enable the project to be completed and that its intent is realistic and practical.

The Commission adopted Rule 25-6.0423(6)(c)5, F.A.C. so that the Commission and parties would have meaningful and relevant information about whether a proposed nuclear project is feasible when reviewing a utility's request that ratepayers be charged for past, present and future costs related to the nuclear project in question. The logic underpinning the rule is simple: A utility must demonstrate that its project remains feasible when asking the Commission and ratepayers to continue funding the project.

Depriving the Commission, the Office of Public Counsel and other parties of the feasibility study while simultaneously asking the Commission to allow FPL to recover millions upon millions of dollars from ratepayers is unfair to the Commission and the parties. The regulator, the Commission, is put in the untenable position of being asked to impose rates for a project unsupported by evidence that the project remains feasible. The customer is asked to pay for a project that may or may not be feasible. Surely, this is not the regulatory construct envisioned by the Commission when it adopted Rule 25.6.0423(6) (c) 5 F.A.C.

FPL's waiver request is legally deficient in that it fails to meet the statutory criteria of demonstrating a substantial hardship or violating the principle of fairness. Additionally, while FPL suggests that its waiver request is "temporary", it asks that it not have to file a feasibility study through 2020. FPL Petition, p. 12. (... "FPL requests that the waiver remain in effect until FPL files for Commission approval to commence preconstruction work – currently estimated for the period 2016 through 2020"). Thus, FPL is suggesting that the Commission approve, and that the customers pay for nuclear costs during years in which FPL does not have to show that the project is feasible.

FIPUG suggests that FPL consider withdrawing its request to increase customers' rates if it is unable to supply a feasibility study as legally required. Such action would retain the status quo of the parties, while providing FPL with the opportunity to review its proposed nuclear project in detail, and if FPL believes the project remains feasible, to file a feasibility study at a later point in time when seeking approval to begin project preconstruction. Indeed, this Commission approved such an arrangement in which Duke Energy Florida, Inc. ("DEF"), being in a similar position to FPL, namely, focused on obtaining permits and licenses for a new nuclear project, is funding such licensing and permitting work while reserving its right to seek recovery

for those costs at a latter point in time. See Order No. PSC-13-0598-FOF-EI, Docket No. 130208-EI. The Commission should require that FPL similarly fund its licensing and permitting activities as a condition to granting FPL's rule waiver request, particularly in light of its request to avoid filing any feasibility study until 2021, potentially. Stated differently, if FPL wishes to be excused from preparing and filing a feasibility study, it should not ask the Commission and ratepayers to fund its permitting and licensing work on a project devoid of evidence that the project remains feasible. As DEF is presently doing, FPL should fund those activities while reserving the right to seek cost recovery if and when FPL files to move forward with the project, as statutorily required.

For the foregoing reasons, the Commission should deny FPL's rule waiver request. Alternatively, if FPL's rule waiver request is granted, the Commission should condition the rule waiver approval on FPL, not FPL ratepayers, funding the permit and licensing activities. FPL would reserve and retain the right to seek cost recovery when FPL files a feasibility study and seeks approval to move forward with its new nuclear project, if such a filing is made.

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CERTIFICATE OF SERVICE

I **HEREBY CERTIFY** that a true and correct copy of the foregoing has been furnished

by electronic mail this 16th day of May, 2016, to the following:

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