

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Nuclear Cost Recovery
Clause.

DOCKET NO.: 170009-EI

FILED: August 31, 2017

**THE FLORIDA INDUSTRIAL POWER USERS GROUP'S POST-HEARING
STATEMENT OF ISSUES AND POSITIONS, POST-HEARING BRIEF, AND NOTICE
OF ADOPTION OF OFFICE OF PUBLIC COUNSEL'S 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 as it relates to issues affecting Florida Power and Light Company ("FPL"). FIPUG also adopts the post-hearing brief of the Office of Public Counsel ("OPC") to the extent that the OPC brief addresses issues or makes arguments not set forth by FIPUG in its post-hearing brief.

BASIC POSITION AND SUMMARY

Nuclear Costs Continue to Increase

FIPUG has historically supported the development of cost effective, reasonable and prudent energy sources to serve Florida consumers. However, FPL's Turkey Point Nuclear Project, specifically Units 6 and 7 ("the Project"), continue to experience delays and precipitous projected cost increases. From last year to this year, the estimated high end price for the Project increased from \$20 billion dollars to \$21.9 billion dollars, nearly a \$2 billion dollar increase over the last 12 months. Exhibit LR-1, p. 12 of 19. These billion dollar-plus cost increases are not consistent with cost effective, reasonable and prudent energy sources.

Project Carrying Costs Continue to Mount

This year, FPL has not given the Commission an estimated time frame as to when and

whether the project will be placed into commercial operation, other than telling the Commission that schedule will be updated when two other nuclear projects, the Vogtle project and Summer project, are completed. The Summer project in South Carolina, was recently abandoned; the Vogtle project continues to experience delays and cost overruns. Instead, FPL is asking the Commission to approve FPL's plans to "pause" the Project for an undetermined time period. Specifically, FPL witnesses testified that the "pause" could be four years, five years, six years, ten years or longer. Tr. 117, 258-259, 265, 276, 327, 354, 368-370, 458. During FPL's ill-defined abatement period, FPL's customers will be charged Project carrying costs at an effective rate of 50%. Tr. 380-385, 407-408. (Interestingly, the maximum statutory interest rate that can be charged before being classified as an unlawful usurious interest rate is 18%; see, s. 687.02(1) F.S.; the effective carrying costs for the FPL Project, 50%, is nearly three times the state's maximum interest rate, 18%, that marks when a loan is considered usurious.) This effective carrying rate is exceedingly high for consumers to bear for an indefinite period of time and the Commission should act to reduce or eliminate these customer carrying costs.

FPL Disregarded the Nuclear Rule and Did Not Provide a Current Feasibility Study

FPL failed to comply with Commission Rule 25-6.0423(6)(c)5, Florida Administrative Code (F.A.C.), in that FPL did not provide the Commission, for the second consecutive year, a Project feasibility analysis as required. The pertinent portion of the rule states:

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.

The rule clearly requires this long-term feasibility analysis so that the Commission can have updated information upon which to make decisions about cost recovery, the future of the Project, increases in Project costs and other changes that affect the viability of the

Project. Despite the unambiguous language of the Commission’s rule requiring an annual submission, FPL has not provided the Commission with an updated feasibility analysis for nearly two and a half years, arguing that the rule provision in question is optional. See FPL Position statement on Issue 6 B. Asking the Commission to make multi-million decisions affecting ratepayers without current information about the long-term feasibility of the Project puts this Commission in an untenable position.

Relief Requested

Without important information found within a feasibility analysis, the Commission should defer addressing whether FPL’s nebulous “pause” plan is reasonable. The Commission should also reduce the effective carrying costs for the Project, something that FPL witness Jennifer Grant-Keene acknowledged could be done. Tr. 381. Finally, the Commission should not allow FPL to recover 2015 and 2016 costs through the nuclear cost recovery clause due to the lack of a required feasibility analysis as detailed below^[1].

STATEMENT OF ISSUES AND POSITIONS:

Issue 1: **Should the Commission find that FPL’s 2015 and 2016 project management, contracting, accounting and cost oversight controls were reasonable and prudent for the Turkey Point Units 6 & 7 project?**

FIPUG: No.

Issue 2: **What jurisdictional amounts should the Commission approve as FPL’s actual 2015 and 2016 prudently incurred costs and final true-up amounts for the Turkey Point Units 6 & 7 Project?**

FIPUG: None. FPL seeks to recover more than 24 million dollars from customers for 2015 but failed to file a feasibility analysis as required by Commission Rule 25-6.0423

^[1] FPL would be free to seek recovery of such costs in its next base rate case, assuming it could prove that such costs were prudently incurred.

F.A.C. FPL seeks to recover more than 22 million dollars from customers for 2016 but failed to file a feasibility analysis as required by Commission Rule 25-6.0423 F.A.C. FPL cannot meet its statutory burden that it has to show that FPL intends to complete the project that is realistic and practical, as required by s. 366.93(f)(3) F.S.

Issue 3: **Should the Commission approve FPL’s request to defer recovery of costs for the Turkey Point Units 6 & 7 Project incurred after December 31, 2016, pursuant to Section 366.93 F.S., and Rule 25-6.0423 F.A.C.? If so, what type of information should FPL report on an annual basis in the Nuclear Cost Recovery docket?**

FIPUG: No. FPL cannot establish, as required by s. 366.93(f)(3) F.S., that it has committed significant, meaningful and available resources to enable the project to be completed and that FPL’s intent to complete the project is realistic and practical. Furthermore, no recovery should be permitted given the lack of a current feasibility study.

Issue 4: **If FPL continues to seek its combined operating license and defers the associated costs, are these costs eligible for cost recovery in a future time period pursuant to Section 366.93 F.S., and Rule 25-6.0423 F.A.C.?**

FIPUG: No. Agree with OPC.

Issue 5: **A) Is FPL’s decision to continue pursuing a combined operating license from the Nuclear Regulatory Commission for Turkey Point Units 6 & 7 reasonable?**

B) Is FPL’s decision to continue pursuing a combined operating license from the Nuclear Regulatory Commission for Turkey Point Units 6 & 7 reasonable pursuant to Section 366.93 F.S., and Rule 25-6.0423 F.A.C.? (OPC)

FIPUG: A: No

B: No

Issue 6: **A) Should the Commission approve what FPL has submitted as its 2017 annual detailed analysis of the long term feasibility of completing the Turkey Point 6&7 project as provided for in Rule 25-6.0423, F.A.C.? (SACE)**

B) Was FPL required to file an annual detailed analysis of the long term feasibility of completing the Turkey Point Unit 6 & 7 project, pursuant to Rule 25-6.0423(6)(c)5., F.A.C.,? If so, has FPL complied with that requirement?

FIPUG: A) No, as nothing was submitted.

B) Yes, an annual detailed analysis of the long term feasibility of completing the Turkey Point Unit 6 & 7 project was and is required to be submitted. FPL has not complied with this requirement.

Issue 7: Has FPL complied with Order No. PSC-16-0266-PCO-EI? If not, what action should the Commission take, if any?

FIPUG: No. The Commission should deny FPL the relief it seeks.

Issue 8: What is the total jurisdictional amount to be included in establishing FPL's 2018 Capacity Cost Recovery Clause factor?

FIPUG: Nothing.

Issue 9: What is the current total estimated all-inclusive cost (including AFUDC and sunk costs) of the proposed Turkey Point Units 6 & 7 nuclear project?

FIPUG: More than FPL previously stated.

Issue 10: What is the current estimated planned commercial operation date of the planned Turkey Point Units 6 & 7 nuclear facility?

FIPUG: Longer than FPL previously stated.

Issue 11: Should the Commission find that during 2016, DEF's accounting and cost oversight controls were reasonable and prudent for the Crystal River Unit 3 Uprate project?

FIPUG: Adopt position of OPC.

Issue 12: What jurisdictional amounts should the Commission approve as DEF's actual 2016 prudently incurred costs for the Crystal River Unit 3 Uprate project?

FIPUG: Adopt position of OPC.

Issue 13: What jurisdictional amounts should the Commission approve as reasonably estimated 2017 exit and wind down costs and carrying costs for the Crystal River Unit 3 Uprate Project?

FIPUG: Adopt position of OPC.

Issue 14: What jurisdictional amounts should the Commission approve as reasonably projected 2018 exit and wind down costs and carrying costs for the Crystal River Unit 3 Uprate Project?

FIPUG: Adopt position of OPC.

Issue 15: What is the total jurisdictional amount for the Crystal River Unit 3 Uprate Project to be included in establishing DEF's 2018 Capacity Cost Recovery Clause Factor?

FIPUG: Adopt position of OPC.

Discussion of Issues

Project Costs Continue to Escalate

FIPUG has long maintained that FPL's proposed new nuclear project will achieve commercial operation later than FPL contends, and that the project will cost more than FPL suggests. FIPUG's position is sound, as FPL now does not have a projected in-service date for the Project, but is asking the Commission to approve a "pause" in the Project that does not have any timeframe boundaries. The costs of the Project continue to escalate, by billions of dollars, as detailed below.

During the 2015 hearing, FPL told the Commission that Turkey Point Units 6 & 7 would cost between \$12.6 billion dollars and \$18.4 billion dollars. Last year, during the 2016 hearing, FPL increased the anticipated estimated Project costs and told the Commission that the two nuclear units will cost between \$13.7 billion dollars and \$20 billion dollars. This year, the

Commission was told that the Project costs are between \$15 billion dollars and \$21.9 billion dollars. Thus, in the span of two years, from 2014 to 2016, the upper range of projected costs for the Project increased \$3.5 billion dollars, from \$18.4 billion dollars to \$21.9 billion dollars. The lower range of the projected costs for the Project increased \$2.4 billion dollars, from \$12.6 billion dollars to \$15 billion dollars during this same two year period. As FIPUG has long maintained, the costs of these nuclear units will be higher than FPL projects and the in-service date will be longer than FPL forecasts. In sum, the increased costs and extended in-service dates run afoul of the concept of cost effective, reasonable and prudent energy resources.

Duke Energy recently announced that it was not seeking recovery from ratepayers of approximately \$150 million dollars associated with its discontinued Levy nuclear project. Similarly, this Commission should devise ways in which the continued drain of tens of millions of dollars from FPL's customers to support FPL's Project, for which no current feasibility study exists, should be abated or reduced.

Commission Rule 25-6.0423(6)(c)5 F.A.C.

The Commission must apply and follow its duly adopted rules. "Without question, an agency must follow its own rules." *Cleveland Clinic v. Agency for Health Care Administration*, 679 So. 2d 1237, 1242 (Fla.1st DCA 1996) citing *Boca Raton Artificial Kidney Center v. Department of Health and Rehabilitative Services*, 493 So.2d 1055 (Fla. 1st DCA 1986). When interpreting rules, words should be given their plain and ordinary meaning. *Gar-Con Development, Inc. v. DER*, 468 So.2d 413, 415 (Fla. 1st DCA 1985).

Commission Rule 25-6.0423(6)(c)5 F.A.C. 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....

This rule provision is quite clear. FPL is required to file a feasibility analysis each year as part of its cost recovery filings.

FPL contends that this rule provision is optional and that FPL needs to file a feasibility study only if it is seeking cost recovery. The rule in question does not contain the word “optional” and FPL’s suggested self-serving interpretation is at odds with the plain language of the rule provision. Tellingly, FPL previously viewed the feasibility analysis as a requirement, a requirement that FPL sought to avoid in 2016 when it filed a rule waiver request in which it asked that the feasibility analysis provision of the rule be waived. Tr. 178-179. The Commission did not act on FPL’s rule waiver filing.

In this case, FPL is seeking cost recovery. Specifically, FPL is seeking cost recovery for 2016 costs. Tr. 350. FPL failed to file a feasibility analysis for these 2016 costs. Indeed, the last feasibility study FPL submitted was May 1, 2015, a study that is not part of this record. Tr. 180. FPL is seeking recovery of 2015 costs. Tr. 348. FPL failed to offer its 2015 feasibility study as evidence in this case, and thus, this record, devoid of a 2015 feasibility analysis, cannot be relied upon to support recovery of 2015 costs.

In sum, FPL asks the Commission to undertake a strained reading of its rule to allow FPL to recover from customers approximately \$20 million for 2015 and \$18 million for 2016. The Commission should disallow FPL’s request to recover these dollars through the nuclear cost recovery clause proceeding due to FPL’s failure to comply with the Commission’s feasibility analysis rule; the Commission could permit FPL to seek to recover such costs in a subsequent base rate case proceeding.

FPL’s Request that the Commission Approve “the Pause” as Reasonable

FPL also asks the Commission to approve FPL’s requested project “pause” and find that

it is “reasonable” for FPL to continue with its efforts to pursue the new Turkey Point nuclear units. The Commission should decline, or defer the response to, FPL’s request for a host of reasons.

First, the duration of FPL’s pause is unclear; FPL witnesses testified that the “pause” period could range from 4 years to 10 years, or longer. Tr. 117, 258-259, 265, 276, 327, 354, 368-370, 458. FPL’s counsel’s belated, self-described “unilateral stipulation” that FPL would make a nuclear filing with the Commission in five years was not evidence, and lawyerly contortions to sway a witness to affirm such a statement do not carry weight when compared to the repeated under oath responses that the timing of the “pause” period was not defined.

Secondly, the carrying costs during the undefined “pause” period are significant and a burden on FPL’s customers. The overall costs for 2017 are estimated to be \$25 million. Tr. 380-384. Half of that sum, \$12.5 million, is carrying costs. Tr. 380-384. It is estimated that the annual costs for the Project after 2017 will be \$10 to \$15 million dollars annually. Tr. 353. Again, half of that annual sum is carrying costs, which includes interest and a profit (return on equity) for FPL’s shareholders. Ironically, if the Commission approves FPL’s request, these carrying costs will compound and accrue, things that the nuclear cost recovery statute was put in place to prevent with its touted “pay as you go” approach.

Third, this Commission should not find that FPL’s approach is “reasonable” at this time because: a) FPL has not submitted a feasibility analysis for the Commission’s consideration since May 1, 2015, nearly 2.5 years ago; b) the Commission cannot make a finding of reasonableness as requested based on such outdated information; c) the Commission should not embark upon a two-step rate increase methodology in which this Commission finds FPL’s ill-defined, feasibility analysis deficient plan “reasonable”, a finding that ties the hands of future

Commissions. Specifically, future Commission would arguably be limited to only reviewing whether FPL's nuclear costs were prudent, i.e., for example, did regulatory counsel working with the Nuclear Regulatory Commission charge a reasonable fee, etc. This Commission should not take action to bind future Commissions, for the same logic that the current legislature is not permitted to bind future Florida legislatures. The principle that the current Legislature cannot "bind the hands" of future Legislatures is clear. See *Neu v. Miami Herald Pub.Co.*, 462 So.2d 821, 824 (Fla. 1985); *Scott v. Williams*, 107 So.3d 379, 389 (Fla. 2013); *Florida Carry, Inc. v. University of Florida*, 180 So.3d 137, 146 (Fla. 1st DCA 2015). Bodies imbued with policy making functions should be free to make policy decisions without being unduly constrained by the actions of a previously constituted tribunal. The policy reasons for this legal principle are similarly well-grounded, whether applied to the collegial body of the Florida Legislature or the collegial body of the Florida Public Service Commission.

For the reasons set forth above, any one of which is sufficient to support Commission action, the Commission should defer responding to, or deny, FPL's request that its planned actions be deemed "reasonable".

Conclusion

The Commission should eliminate or greatly reduce the effective carrying costs for the Project. FPL shareholders have virtually no "skin in the nuclear cost recovery game" and the sharing of carrying costs between ratepayers and shareholders is warranted and in order. The Commission should not allow FPL to recover 2015 and 2016 costs through the nuclear cost recovery clause due to the lack of a required feasibility analysis, but permit FPL to seek recovery of such costs in its next base rate case. The Commission should not rule on whether FPL's "pause" plan is "reasonable", given the murky information provided by FPL, and the lack of quantitative information about whether the project remains feasible.

Dated this 31th day of August, 2017

Respectfully submitted,

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CERTIFICATE OF SERVICE
Docket No. 170009-EI

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

by electronic mail on this 31th day of August, 2017, to the following:

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