

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Fuel and purchase power cost recovery
clause with generating performance incentive
factor

Docket No: 20170001-EI

Date: November 16, 2017

**UNOPPOSED MOTION BY FLORIDA POWER & LIGHT COMPANY'S FOR LEAVE
TO FILE RESPONSE TO NEW ISSUE RAISED IN FIPUG'S POST-HEARING BRIEF**

Florida Power & Light Company ("FPL"), pursuant to Rule 28-106.204, Florida Administrative Code, requests permission to file a limited response to the Florida Industrial Power Users Group's ("FIPUG") post-hearing brief. FIPUG raises a purported jurisdictional issue in its brief that had not been previously identified. FPL seeks to file a response directed solely at the new issue, so that it may be afforded due process and the opportunity to be heard regarding that issue. In support of this Motion, FPL states:

1. On February 20, 2017, this Commission entered an Order Establishing Procedure which provided parties an opportunity to identify issues to be litigated, and, if necessary, briefed at the conclusion of the hearing in this Docket. PSC-17-0053-PCO-EI, p. 7. Additionally, during the course of this docket, the Commission Staff held meetings to identify issues to be addressed. Pursuant to the OEP, parties should have identified all issues by the time of the prehearing conference, which occurred on October 11, 2017. FIPUG raised no jurisdictional issue at any time before or during the prehearing conference, or at hearing.

2. For the first time in its post-hearing brief, FIPUG argued that the Commission lacks jurisdiction to approve a solar base rate adjustment because there is no legislative authority that allows recovery of solar generation through the Fuel Cost Recovery Clause ("Fuel Clause"). Had FIPUG timely raised this issue, FPL would have pointed out that it does not seek to recover the costs of solar generation through the Fuel Clause; rather it seeks to invoke the Solar Base Rate Adjustment ("SoBRA") mechanism approved by the Commission as part of FPL's 2016

Rate Settlement Agreement. See Order No. PSC-16-0560-AS-EI issued December 15, 2016. As its name indicates, the SoBRA mechanism provides for cost recovery through base rates.

3. To the extent FIPUG may introduce this new issue in its post-hearing brief because it purports to raise a jurisdictional question, FPL should be allowed to file a response directed at this discrete issue. FPL had no prior notice of FIPUG's jurisdictional argument, and, absent an opportunity to file a response, will be deprived of the opportunity to be heard. *See Citizens v. Public Serv. Comm'n*, 146 So. 3d 1143, 1154 (Fla. 2014) ("the legislature may determine by what process and procedure legal rights may be asserted and determined provided that the procedure adopted affords reasonable notice and a fair opportunity to be heard before rights are decided.").

4. FPL's response directed to FIPUG's "jurisdictional" argument is attached as Exhibit A to this Motion.

5. FPL has communicated with counsel for FIPUG regarding this Motion and is authorized to represent that FIPUG has no objection to the relief sought.

WHEREFORE Florida Power & Light Company requests that the Commission grant it leave to file the attached response to the new jurisdictional issue raised in FIPUG's post-hearing

brief and deem the response filed as of this date.

Respectfully submitted,

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CERTIFICATE OF SERVICE
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EXHIBIT A

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Fuel and purchase power cost recovery
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**FLORIDA POWER & LIGHT COMPANY’S RESPONSE
TO UNIDENTIFIED ISSUE RAISED IN FIPUG’S POST-HEARING BRIEF**

Florida Power & Light Company (“FPL”) hereby files this response which addresses a previously unidentified issue raised by the Florida Industrial Power Users Group’s (“FIPUG”) for the first time in its post-hearing brief. FIPUG contends that the Florida Public Service Commission (“Commission”) lacks jurisdiction to approve FPL’s solar base rate adjustments because FPL seeks “to recover nearly \$1 billion of capital costs for solar energy projects *through the fuel clause.*” FIPUG Br. at 1 (emphasis added). The premise to FIPUG’s argument is flat out wrong. As the name plainly indicates, solar *base rate* adjustments are recovered through base rates. No adjustment will be made to the fuel factor. Even the acronym used for FPL’s cost recovery mechanism belies FIPUG’s misguided argument: FPL is seeking approval for a “SoBRA” (Solar Base Rate Adjustment), not a “SoFA” (Solar Fuel Adjustment). No jurisdictional issue exists.

Background

By Order No. PSC-16-0560-AS-EI, dated December 15, 2016 and pursuant to its authority under the provisions of Chapter 366, Florida Statutes, the Commission approved the Stipulation and Settlement for FPL’s 2016 rate case (the “Rate Settlement Agreement” or “RSA”). Paragraph 10 of the Rate Settlement Agreement authorizes FPL to recover the costs for constructing up to 300 megawatts (“MW”) of solar generation annually from January 1, 2017 through December 31, 2020 (1,200 MW total). RSA ¶ 10(a). Specifically, the Rate Settlement Agreement includes a SoBRA mechanism by which FPL may recover the annualized revenue

requirements of cost-effective, reasonably priced solar generation through a base rate adjustment upon each project's commercial operation date. RSA §§ 10(a), (c).

The Rate Settlement Agreement also provides that, if the proposed solar generation is not subject to the Power Plant Siting Act, FPL will petition for approval of the SoBRA in the Fuel and Purchased Power Cost Recovery Clause docket ("Fuel Docket"). RSA § 10(c). All Fuel Docket deadlines and schedules apply, but the Commission may set FPL's request for approval of the SoBRA for a separate hearing. RSA § 10(c).

As required by the Rate Settlement Agreement, FPL filed its Petition ("SoBRA Petition") and related materials for approval of 298 MW of solar generation that will be placed in service by January 1, 2018 ("2017 Project") and 298 MW that will be placed in service by March 1, 2018 ("2018 Project"). Also as required by the Rate Settlement Agreement, the Commission included a set of issues addressing the SoBRA Petition (Issues 2J through 2P) ("SoBRA Issues") as part of the regularly scheduled Fuel Docket hearing, which occurred on October 25, 2017.

Only FIPUG disputed the SoBRA Issues. On November 13, 2017, FPL and FIPUG filed post-hearing briefs. FIPUG's post-hearing brief included the contention that the Commission lacks authority to approve the SoBRAs because there is no legislative authority that allows recovery of solar generation through the Fuel Clause. FIPUG did not raise this issue by the time of the prehearing conference or at any other time before including it in its brief, and FPL could not have reasonably anticipated it because, as described in greater detail below, FPL does not seek fuel clause recovery for the Projects.¹

¹ The fuel *savings* will flow to customers through the fuel clause and was reflected in the 2018 fuel factor approved by the Commission.

**The Pertinent Orders and Testimony Clearly State
that the Solar Project Costs Will Be Recovered Through Base Rates**

FIPUG misrepresents the issues to be resolved by the Commission as being “related to FPL’s efforts to recover nearly \$1 billion of capital costs for solar energy projects through the fuel clause.” FIPUG Br. 1. FIPUG doesn’t just miss the mark; it can’t even see the target. By definition, a SoBRA adjusts base rates, not the fuel factor. FIPUG’s mischaracterization is rooted not in a mistaken interpretation but in an abject failure (or refusal) to read the Rate Settlement Agreement, the Commission’s Prehearing Order, or FPL’s testimony.

The Rate Settlement Agreement is unambiguous. It expressly states in multiple places that the revenue requirements for the solar facilities will be recovered through the base portion of customer bills:

- “For each solar project that is approved by the Commission for cost recovery pursuant to the process described in this Paragraph, FPL’s *base rates* will be increased by the incremental annualized base revenue requirement (as defined in Paragraph 10(e)) for the first 12 months of operation (the “Annualized Base Revenue Requirement”), but in no event before the facility is in service. Each such base rate adjustment will be referred to as a Solar Base Rate Adjustment (“SoBRA”)” RSA ¶ 10(a).
- “[T]he issues for determination are limited to the cost effectiveness of each such project (*i.e.*, will the project lower the projected system cumulative present value revenue requirement “CPVRR” as compared to such CPVRR without the solar project) and the amount of revenue requirements and appropriate percentage increase in *base rates* needed to collect the estimated revenue requirements.” RSA ¶ 10(c).
- “For each solar project approved pursuant to this Agreement, the *base rate* increase shall be based upon FPL’s billing determinants for the first 12 months following such project’s commercial in-service date” RSA ¶ 10(c).
- “Each SoBRA is to be reflected on FPL’s customer bills by increasing *base charges* and *base non-clause* recoverable credits and commercial/industrial demand reduction rider credits by an equal percentage contemporaneously. . . . FPL will begin applying the incremental *base rate charges* and *base credits* for each SoBRA to meter

readings made on and after the commercial in-service date of that solar generation site.” RSA ¶ 10(e).

(emphases added). Indeed, a cursory review of the Rate Settlement Agreement makes clear that the SoBRA mechanism functions in much the same way as FPL’s generation base rate adjustment (“GBRA”) mechanism, an element of FPL’s 2013 base rate settlement agreement to which FIPUG was a signatory. FIPUG fails to explain why the Commission suddenly lacks authority to approve a mechanism that FIPUG agreed it could implement – and was implemented – three times between 2013 and 2016. See Order Nos. PSC-12-0664-FOF-EI (Cape Canaveral GBRA); PSC-13-0665-FOF-EI (Riviera Beach GBRA); PSC-15-0586-FOF-EI (Port Everglades GBRA).

Likewise, the issues identified in the Commission’s Prehearing Order make clear that cost recovery, if approved, will occur through base rates:

ISSUE 2L: What is the appropriate *base rate* percentage increase for the 2017 SoBRA projects to be effective when all 2017 projects are in service, currently projected to be January 1, 2018?

ISSUE 2O: What is the appropriate *base rate* percentage increase for the 2018 SoBRA projects to be effective when all 2018 projects are in service, currently projected to be March 1, 2018?

ISSUE 2P: Should the Commission approve revised tariffs for FPL reflecting the *base rate* percentage increases for the 2017 and 2018 SoBRA projects determined to be appropriate in this proceeding?

See Order No. PSC-2017-0399-PHO-EI (Prehearing Order) (emphases added).

FPL’s testimony further confirms it seeks to recover the Projects’ revenue requirements² through base rates, not a clause. FPL witness Tiffany Cohen presented the SoBRA factor and states that “[a]pplication of the SoBRA factors to the Company’s January 1, 2018 and March 1, 2018 *base rates* will provide the Company with sufficient revenue to recover the costs associated with the construction and operation of the 2017 and 2018 Projects.” Tr. 183. Witness Cohen provided exhibits that summarize the base rates proposed to become effective for meter readings made on and after January 1 and March 1. Exs. 49-50.

Nowhere does the Rate Settlement Agreement, the Prehearing Order or FPL’s testimony contemplate that the revenue requirements associated with the Projects will result in an increase – or impact of any kind – to FPL’s fuel factor. In fact, the fuel factors to be implemented January 1 and March 1 already were stipulated and approved and will not change as a result of the SoBRAs. Tr. 390-91. In short, FPL does not seek to recover the capital costs for the Projects through the Fuel Clause.

**Use of the Fuel Docket for FPL’s
SoBRA Petition is Based on Administrative Efficiency**

The Rate Settlement Agreement provides that, like the GBRA mechanism that preceded it, SoBRA filings will be made in the Fuel Docket. Using the Fuel Docket facilitates administrative and procedural efficiency but has no substantive import.

The Fuel Docket is an annual proceeding with a relatively predictable schedule. Thus, the Fuel Docket provides a level of certainty as to when parties can expect the SoBRA filing to be made. Moreover, the filing is made in a proceeding in which many intervenors who are traditionally interested in FPL’s rates routinely participate. Indeed, FIPUG is an annual

² FPL witness Liz Fuentes testified that the revenue requirement for the Projects includes the capital costs and operating costs associated with each Project. Tr. 177.

participant. For that reason, FIPUG was aware that FPL's GBRA filings were made in the Fuel Docket, even though the costs for those plants were recovered through base rates. Finally, filing the request for SoBRA approval in the Fuel Docket streamlines the synchronization of the base rate increase and the reduction in fuel costs resulting from the Projects' commercial operation.

Use of the Fuel Docket does not change the nature of the cost recovery mechanism, however. Irrespective of the docket in which the SoBRA Petition is filed, the fuel factor is not used to recover the revenue requirements associated with the solar generation.

No Jurisdictional Question Exists

The extent of the PSC's jurisdiction to allow cost recovery through the clause is immaterial and irrelevant to a decision on FPL's SoBRA Petition because FPL does not seek fuel clause recovery of the revenue requirements associated with the 2017 and 2018 Projects. If approved, the costs of constructing and operating the Projects will be recovered through base rates. The Florida Supreme Court has confirmed the Commission's authority to approve a mechanism that allows base rate adjustments in years beyond the test year. *See Citizens v. Public Serv. Comm'n*, 146 So. 3d 1143, 1157 n.7 (Fla. 2014) (affirming Commission's approval of base rate settlement agreement that included the GBRA mechanism, and noting that the Court "long ago recognized that rates are fixed for the future and that it is appropriate for [the Commission] to recognize factors which affect future rates and to grant prospective rate increases based on these factors.").

WHEREFORE, Florida Power & Light Company requests that the Commission (i) reject FIPUG's purported jurisdictional argument and (ii) authorize FPL to implement the

solar base rate adjustments when the 2017 and 2018 Projects enter commercial operation.

Respectfully submitted,

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