

**Ruth Nettles**

090002-EG

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**Subject:** Electronic Filing / Docket 090002-EG/ FPL's Response to FIPUG's Motion to Compel  
**Attachments:** 10 12 09 FPL Resp to FIPUG 1st POD INT (FINAL).pdf

Electronic Filing

a. Person responsible for this electronic filing:

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b. Docket No. 090002-EI \ In re: Energy Conservation Cost Recovery Clause

c. Document is being filed on behalf of Florida Power & Light Company.

d. There are a total of 7 pages in the attached document.

e. The document attached for electronic filing is Florida Power & Light Company's Response to Florida Industrial Power Users Group's Motion to Compel

Thank you for your attention and cooperation to this request.

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DOCUMENT NUMBER-DATE

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FPSC-COMMISSION CLEAR

**BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION**

In Re: Energy Conservation Cost )  
Recovery Clause )  
\_\_\_\_\_ )

Docket No: 090002-EG

Date: October 12, 2009

**FLORIDA POWER & LIGHT COMPANY'S RESPONSE  
TO FLORIDA INDUSTRIAL POWER USERS  
GROUP'S MOTION TO COMPEL**

Florida Power & Light Company ("FPL"), by and through its undersigned counsel, hereby serves this its response to the Motion to Compel filed on behalf of The Florida Industrial Power Users Group ("FIPUG") dated October 5, 2009, and states as follows:

1. FPL initially notes that while maintaining all objections previously filed and without waiver of any of said objections, and further in consideration of the fact that this matter is set for final hearing on November 2-4, 2009, FPL has served responses to the FIPUG discovery which forms the basis of the pending motion. Certain discovery responses were served by FPL on Friday, October 9, 2009, while the remaining FPL discovery responses have been served on this date, October 12, 2009.

2. Because FPL has now responded to FIPUG's 11<sup>th</sup> hour discovery requests, the Motion to Compel is moot. However, because FPL believes there are significant inaccuracies in the Motion that must be addressed, FPL is filing this response to avoid any misimpressions about FPL's position that are suggested or implied by the FIPUG Motion to Compel.

3. Contrary to FIPUG's representations, in both this docket and in the FPL rate case, Docket Nos. 080677-EI and 090130-EI, FPL has consistently asserted that the issues raised by FIPUG in its 11<sup>th</sup> hour discovery are appropriately propounded and litigated in the DSM

dockets. (Order No. PSC-09-0573-PHO-EI, Prehearing Order in rate case, Issue 167, and rate case testimony of Renae Deaton, Tr. 4224, 4339-4340.)

4. In the “Background” section of the FIPUG Motion to Compel, FIPUG misstates or misrepresents the FPL position on this point. FIPUG points to Issue 167 of the Prehearing Order in the FPL rate case which reads as follows:

**Issue 167:** Is FPL’s CDR credit appropriate?

FIPUG then argues the following: “In each case (the FPL and PEF rate cases) the Prehearing Officer permitted FIPUG’s issues to remain in the case. However, Staff **and the utilities** took the position that such issues should be addressed in a conservation docket.” (emphasis added) The clear implication from this argument is that FPL agreed at the time of the prehearing conference in the rate case that the issue in question is appropriate for this docket.

5. FPL recognizes that Staff took the position that “this issue would more appropriately be addressed in the Conservation Cost Recovery Clause docket”. However, it is curious that FIPUG omits from this discussion the FPL position on Issue 167 from the rate case which reads as follows:

**Issue 167:** Is FPL’s CDR credit appropriate?

**FPL:** Yes, it is appropriate. The CDR credits are properly determined in Demand Side Management (DSM) Goals and DSM Plan proceedings. FPL’s CDR credit was reviewed and approved by the FPSC in the 2004 DSM Goals and DSM Plan proceedings, Docket No. 040029-EG. It was subsequently changed as part of the 2005 Rate Case proceeding to remove embedded Gross Receipts Tax in Docket No. 050045-EI. **The CDR credit is under review by the FPSC in the current DSM Goals and DSM Plan proceedings, Docket No. 080407-EG.**” (emphasis added)

6. FIPUG also argues for the discovery in this docket by stating that “FIPUG should not be placed in the conundrum of having no forum in which to address the issues.” This argument is spurious at best, particularly where FPL has consistently identified the appropriate docket in which these issues may be litigated, a docket in which FIPUG has intervened. In short, contrary to FIPUG’s implication that FPL is playing a game of “gotcha”, FPL specifically pointed out in its objections to the pending discovery that the appropriate forum for litigation and decision on this issue is the upcoming DSM Plan proceedings. FPL’s DSM Plan will be developed, filed and reviewed following the Commission’s order on its DSM Goals in Docket 080407-EI. This will take place in a later phase of the DSM Goals docket, or in a separate DSM Plan docket.

7. Further to this point, at paragraph 11 of FIPUG’s Motion, FIPUG briefly summarizes FPL’s substantive objections to the discovery, then argues as follows: “FPL then asserts that such issues should have been raised in the conservation goals docket.” FIPUG repeats this position at the start of paragraph 13 with the following statement: “FPL contends that FIPUG’s issues should be considered in the conservation goals docket (Docket No. 080407-EG)”. The hearing on this docket was held August 10-14, 2009 thereby suggesting that FPL is arguing that the time for litigating these issues has passed. Nothing could be further from the truth.

8. In making this argument, FIPUG again either inadvertently or intentionally misstates and misrepresents the position FPL has consistently taken in this case. In fact, in FPL’s objections to the FIPUG discovery served in this docket (attached and appended as Exhibit B to FIPUG’s Motion to Compel), FPL specifically asserted (at pages 3-4 of Exhibit B)

the following: “In the event FIPUG chooses to explore the matters which form the basis of the discovery propounded to date in this docket, that discovery should instead be propounded at the appropriate time in the DSM Plan docket. (emphasis added). It should be noted that the DSM Plan phase of the DSM Goals proceeding, or a separate DSM Plan docket, will be opened during the first few months of calendar year 2010.

9. This same position – that FPL contends that litigation of the credit issues should take place in the DSM Plan docket – was also clearly enunciated in paragraphs 1 and 2 of FPL’s September 23, 2009 Response to FIPUG’s September 16, 2009 Motion for Extension of Time to File Intervenor Testimony, where FPL argued in pertinent part as follows:

“In short, FIPUG has chosen the wrong docket in which to raise “the credit issues” (see paragraph 4 of FIPUG’s Motion), as any such issues would appropriately be raised and litigated in the process for setting DSM goals and approving DSM plan – consisting of individual DSM programs and the incentive payments/credits offered by each program - that is currently underway (the “DSM Proceeding”).<sup>1</sup>

The DSM Proceeding is the proper forum in which parties may seek to challenge, alter or amend FPL conservation programs, the costs and expenses of which are ultimately projected and trued up in this pending ECCR Docket. Contrary to FIPUG’s assertion found at paragraph 4 of its Motion, FIPUG clearly has a “legitimate forum in which to raise issues related to the interruptible and/or curtailable credits and have them decided on the merits by this Commission“, and that forum is the DSM Proceeding. It is thus premature and inappropriate to attempt to raise those issues in this ECCR Docket.”

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<sup>1</sup> The Commission is presently determining appropriate DSM goals for FPL in Docket No. 080407-EG. At the conclusion of that process, FPL will be directed to file a revised DSM plan within 90 days, which will then be subject to review and scrutiny. FIPUG is a party to Docket No. 080407-EG.

10. Finally, FIPUG argues at paragraph 16 of its Motion that “FPL’s failure to respond to FIPUG’s discovery prejudices FIPUG in the presentation of its case, if the Commission does not consider such issues in the FPL rate case.” First, this argument is now moot in light of the fact that FPL has responded to the discovery. Further, it is hard to imagine how FIPUG, a party that gave notice of its intent to remain a party to this docket on February 13, 2009, but waited until September 16, 2009 to propound the subject discovery in anticipation of a November 2-4, 2009 hearing, can blame anyone but itself for the time frame in which it has access to information which it believes to be relevant to the subject proceedings.

Respectfully submitted,

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**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that a true and correct copy of the foregoing was served by electronic delivery this 12th day of October, 2009 to the following:

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