

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Fuel and purchased power
cost recovery clause and generating
performance incentive factor.

Docket No. 180001-EI
Filed: May 11, 2018

**THE FLORIDA INDUSTRIAL POWER USERS GROUP'S
MOTION TO INCLUDE ISSUES RELATED TO PRUDENCE AND NEED**

The Florida Industrial Power Users Group (“FIPUG”), pursuant to rule Rule 28-106.204, Florida Administrative Code (“FAC”), hereby moves this Commission for the entry of an order to include the following two issues in this docket:

Proposed Issue One: Are the solar projects for which Florida Power & Light Company (“FPL”) seeks to recovery rates prudent (“The Prudence Issue”)?

Proposed Issue Two: Are the solar projects for which FPL seeks to recover rates needed (“The Need Issue”)?

The grounds for this motion are the following:

1. On April 11, 2018, FIPUG participated in an informal meeting convened by Commission staff during which the parties and staff discussed disputed issues of fact to be determined in the above-referenced docket. Before the informal meeting, FIPUG proposed in essence the Prudence Issue set forth above. After the meeting, FIPUG proposed what is set forth above as the Need Issue.

2. During the April 11, 2018 informal meeting, Commission staff indicated that it was disinclined to support the inclusion of the Prudence Issue because the 2016 Settlement Agreement (an accord reached by three of nine intervenors in FPL’s last rate case, and which FIPUG did not sign) expressly states the terms by which the Commission would consider FPL’s

proposed solar projects and its associated request for a rate increase.

3. FPL did not take a position on FIPUG's proposed Prudence Issue at the informal hearing, but asked for an additional week to consider the matter. A week later, on April 18, 2018, FPL responded and stated its opposition to the Prudence Issue and the Need Issue. FPL's response is set forth below:

As to the new issues proposed by FIPUG, FPL objects to both issues because they are unnecessary and inappropriate under the terms for SoBRA recovery prescribed by FPL's settlement agreement (approved in Order No. PSC-16-0560-AS-EI). We understand that FIPUG will have the opportunity to file a motion requesting that the Commission include those issues. FPL will be prepared to respond.

4. In support for its motion to include the Prudence Issue and Need Issues, FIPUG would note that section 366.06, Florida Statutes, provides in pertinent part that:

"All applications for changes in rates shall be made to the commission in writing under rules and regulations prescribed, and the commission shall have the authority to determine and fix fair, just, and reasonable rates that may be requested, demanded, charged, or collected by any public utility for its service. The commission shall investigate and determine the actual legitimate costs of the property of each utility company, actually used and useful in the public service, and shall keep a current record of the net investment of each public utility company in such property which value, as determined by the commission, shall be used for ratemaking purposes and shall be the money honestly and prudently invested by the public utility company in such property used and useful in serving the public, less accrued depreciation, and shall not include any goodwill or going-concern value or franchise value in excess of payment made therefor." (emphasis added).

5. The Commission should adhere to its statutory obligations, including a prudence review, regardless of the restrictive terms of the 2016 Settlement Agreement, when considering whether to increase customer rates for FPL's solar/SoBRA projects. Importantly, It has been judicially recognized that the prudence standard is routinely and regularly used when the Commission reviews utility costs and is engaged in ratemaking. See *Southern Alliance for Clean Energy v. Graham* 113 So. 3rd 742, 750 (Fla. 2013) ("Moreover, statutes and caselaw routinely

apply the prudence standard in the PSC context.” Citations omitted). Undoubtedly, whether FPL’s decision to exercise its option to construct utility scale solar projects contained within the 2016 Settlement Agreement and seek an attendant rate increase is prudent, and whether such solar projects are needed, are relevant issues to be considered in this proceeding.

6. The Commission has long used a prudence standard of review when considering whether to increase customer rates. The Commission has articulated its prudence standard as what a reasonable utility manager would have done, in light of the conditions and circumstances that were known, or should have been known, at the time the decision was made.

7. In the upcoming review of FPL’s rate increase for its proposed solar/projects, the Commission should, as statutorily directed, conduct a prudence review and needs analysis to determine whether the solar/SoBRA projects for which FPL seeks to recovery additional rates from FIPUG members and other customers represent “money honestly and prudently invested by the public utility company in such property used and useful in serving the public”. (emphasis added).

8. Prompt consideration of the two issues sought to be raised and litigated by FIPUG is requested, so that its trial preparation and work product can be guided by the scope and breadth of the issues to be litigated in this docket.

9. Given the factual background detailed above in which FPL stated its opposition to the inclusion of the Prudence Issue and the Need Issue as matters to be litigated in this case, and its helpful suggestion that FIPUG file a motion to seek appropriate relief from this Commission, FIPUG did not engage in the unnecessary step of ascertaining FPL’s position on the motion, since FPL made its position clear.

WHEREFORE, for the reasons set forth above, FIPUG respectfully seeks the entry of an order directing that the Prudence Issue and the Need Issues as framed above be included in this proceeding.

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing was furnished to the following by Electronic Mail, on this 11th day of May, 2018:

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