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BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

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In re: Fuel and Purchased Power Cost )  
Recovery Clause with Generating )  
Performance Incentive Factor )  
\_\_\_\_\_ )

Docket No. 040001-EI  
Filed: October 4, 2004

DIRECT TESTIMONY

OF

MICHAEL F. VOGT

ON BEHALF OF

THE FLORIDA INDUSTRIAL POWER USERS GROUP

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**INTERVENOR TESTIMONY OF**  
**MICHAEL F. VOGT**  
**ON BEHALF OF THE FLORIDA INDUSTRIAL POWER USERS GROUP**

**INTRODUCTION**

**Q. Please state your name and business address.**

A. My name is Michael F. Vogt. My business address is 400 Chesterfield Center, Suite 110, Chesterfield, Missouri 63017.

**Q. By whom are you employed and in what capacity?**

A. I am employed by LS Power Development, LLC, the general partner of LS Power Associates, L.P. (LS Power Associates). My title is Project Manager.

**Q. Briefly describe your educational experience and background?**

A. I have 12 years experience in the electric power industry. I have a Bachelors of Science in Mechanical Engineering, from the University of Missouri – Columbia and am a registered professional engineer in the State of Missouri. From 1992 to 1997, I was employed by Black & Veatch as a mechanical engineer involved in the design, start-up, and testing of power generation facilities. Since 1997, I have been employed by LS Power in various positions. At LS Power, I have been involved in the site selection, community relations, permitting, development, marketing, financing and management of independent power projects.

**Q. Briefly describe LS Power Associates.**

LS Power Associates is an independent power producer that develops, owns, operates and manages large-scale power generation projects in the United States. Since 1990, LS Power Associates and its predecessor companies (LS

1 Power) have successfully developed nine green-field domestic power generation  
2 projects totaling in excess of 5,700 megawatts (MW) of electrical output and  
3 representing a capital investment of approximately \$3 billion.

4 **Q. Is LS Power involved in wholesale power activities in the southeastern**  
5 **United States?**

6 A. Yes. LS Power has been active in developing, owning and managing power  
7 generation projects in the southeastern United States for the majority of its  
8 history. More recently, we have been focused on the development of a coal-  
9 fired power generating facility in Early County, Georgia. We expect to complete  
10 permitting of this project in the second half of 2005 and have targeted an in-  
11 service date in late 2009 or 2010. The activities to date have included: securing  
12 real estate for the project site, extensive public relations work at the local and  
13 state level, preparation and filing of various environmental permits, and marketing  
14 power output from the facility.

#### 15 SUMMARY

16 **Q. On whose behalf are you testifying in this docket?**

17 A. I am testifying on behalf of the Florida Industrial Power Users Group (FIPUG).  
18 FIPUG is an ad hoc group of large industrial consumers that participates annually  
19 in the fuel adjustment proceedings with the aim of ensuring that the costs  
20 charged to consumers through the various recovery clauses, including the fuel  
21 adjustment clause, are just and reasonable. It is my understanding that the  
22 FIPUG group actively supports a competitive wholesale market for power. I

1 further understand that FIPUG also strongly supports the Florida Public Service  
2 Commission's Mission Statement, which appears on its website, and states:

3 Customers are served best by markets that facilitate the efficient  
4 provision of safe and reliable utility services at fair prices. The  
5 mission of the Florida Public Service Commission is to promote the  
6 development of competitive markets – as directed by state and  
7 federal law – by removing regulatory barriers to competition, and  
8 by emphasizing incentive-based approaches....

9 In keeping with these stated policies, and because under the  
10 Commission's guaranteed cost recovery mechanisms consumers bear the full  
11 risk of purchased power contracts, FIPUG seeks affirmative proof that the  
12 proposed UPS purchase power agreements (UPS PPAs) I discuss below are the  
13 most efficient and economical choice for retail ratepayers. FIPUG companies are  
14 captive customers of Florida Power & Light (FPL) and Progress Energy Florida  
15 (Progress Energy). For this reason, they feel entitled to reassurance that these  
16 utilities have met their fiduciary responsibility to customers to fully survey and  
17 analyze all options available to meet the capacity needs of their retail customers  
18 at the possible lowest cost and that the contract provisions provide sufficient  
19 identification of the cost components so that they can be fairly allocated between  
20 customer classes.

21 **Q. What is the purpose of your testimony?**

22 A. The purpose of my testimony is to recommend a more deliberate and careful  
23 approach for evaluating long-term purchase agreements. The UPS PPAs for

1 which FPL and Progress Energy seek multiyear preapproval comprise large,  
2 long-term power purchase commitments. Before the Commission approves such  
3 commitments, it should be fully satisfied by competent substantial evidence that  
4 all options to fill the utilities' capacity needs have been thoroughly and  
5 appropriately analyzed in a manner to ensure that the interests of the Florida  
6 ratepayers have been adequately represented. Privately negotiated bilateral  
7 contracts aren't necessarily bad, but they do lack the imprimatur that comes with  
8 open market transactions, thereby making it all the more important to have  
9 adequate time for evaluation of them. As the Commission noted in last year's  
10 fuel adjustment proceeding, the truncated time frame of the fuel adjustment does  
11 not lend itself to the type of analysis needed for significant and complex issues.  
12 Thus, the question of the appropriateness of the UPS PPAs at issue should be  
13 considered in a separate docket where all parties have sufficient time to conduct  
14 discovery and thoroughly analyze the transactions and alternatives to the  
15 transactions.

16 **Q. What documents other than the Commission Mission Statement mentioned**  
17 **above did you review in preparing your testimony?**

18 A. In preparing my testimony, I have reviewed the following documents:

- 19 a. The testimony of Tom Hartman of FPL and Exhibits TLH-1 through TLH-6,  
20 dated September 9, 2004, filed in this docket; and  
21 b. The direct testimony of Samuel S. Waters of Progress Energy, dated  
22 September 9, 2004, filed in this docket.

1 **Q. Based on your review of these documents, what is your understanding of**  
2 **the UPS PPAs for which approval is sought?**

3 A. Based on my review of the previously referenced documents and witness  
4 testimony, it appears that:

- 5 a. FPL has negotiated three PPAs with subsidiaries of the Southern  
6 Company that will begin on June 1, 2010 and extend until December 31,  
7 2015. The three contracts represent 955 MW of generating capacity.  
8 Specifically: i) an approximately 165 MW (19.57% of unit capacity)  
9 purchase contract with Georgia Power Company and Gulf Power  
10 Company from the Robert W. Scherer Unit 3 coal generating station, ii) an  
11 up to 600 MW (100% of unit capacity) purchase contract with Southern  
12 Power Company from the Harris Unit 1 combined cycle facility, and iii) an  
13 approximately 190 MW (35.1% of unit capacity) purchase contract with  
14 Southern Power Company from the Franklin Unit 1 combined cycle facility.
- 15 b. Progress Energy has negotiated a Letter of Intent to Purchase Capacity  
16 and Energy from the Southern Company. Specifically, Progress Energy  
17 expects to negotiate definitive agreements with: i) Georgia Power  
18 Company and Gulf Power Company for the purchase of 8.77% of the  
19 demonstrated capacity of the Scherer 3 coal fired steam turbine estimated  
20 to be 74 MW and ii) Southern Power Company for the purchase of  
21 approximately 64.4% of the entire output (estimated to be 351 MW) of  
22 capacity from the Franklin Unit 1 combined cycle facility, located in

1 Smiths, Alabama. Both of these agreements are to begin on June 1, 2010  
2 and end on May 31, 2015.

3 c. Testimony provided by both witnesses indicate that they believe it is  
4 important for the Commission to approve these contracts because:

5 i. They have a coal component;

6 ii. They provide access to existing transmission in the Southern  
7 region, which provides increased access to other generating  
8 resources and enhances system supply reliability; and

9 iii. The purchases allow FPL and Progress Energy to defer additional  
10 generating capacity in 2010.

11 **Q. In your opinion, does sufficient time exist for the Commission and affected**  
12 **parties to adequately review and evaluate the UPS PPAs described above in**  
13 **this docket?**

14 A. No. As the Commission has previously recognized, the regulatory nature of the  
15 fuel adjustment proceeding is such that it has a narrow focus and an accelerated  
16 review schedule. The fast track of the fuel docket left FIPUG with an  
17 unrealistically small window of opportunity to review, analyze and conduct  
18 discovery on the utility's testimony. The procedural order<sup>1</sup> in this docket provides  
19 for a shortened 20-day discovery response time. If FIPUG had analyzed the  
20 testimony and formulated comprehensive discovery so as to have served it the  
21 very day after the testimony was filed (September 10<sup>th</sup>), and if all the answers  
22 had been complete with no objections lodged, it would have received such  
23 responses on September 30<sup>th</sup> – one business day before Intervenor testimony is

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<sup>1</sup> Order No. PSC-04-0160-PCO-EI at 1 (February 17, 2004).

1 due. This is not sufficient time to prepare, serve, receive and analyze even one  
2 full round of discovery prior to the testimony due date, let alone conduct follow-up  
3 discovery or depositions. In sum, the time allowed to conduct discovery in this  
4 docket was not sufficient to conduct meaningful discovery and prepare testimony  
5 based on that discovery.

6 **Q. Are there further complications to a truncated review of these PPAs?**

7 A. Yes. Review is further complicated, and thus made more time consuming, by the  
8 number and types of purchase contracts for which the utilities seek approval.  
9 FPL is requesting approval of three different UPS PPAs, from three separate  
10 power generation facilities, with two different fuel types, and two different counter  
11 parties. Progress Energy similarly is requesting approval of two different UPS  
12 PPAs, two different power generation facilities, two fuels and two different  
13 counter parties. In addition, the contracts need to be thoroughly examined to  
14 give the public the comfort of knowing there are no contract provisions or affiliate  
15 relations that pose a risk of harm to consumers.

16 Though the provisions of the "bid rule" do not apply to the UPS PPAs, such  
17 agreements present many of the same policy issues as the addition of generating  
18 capacity. This is especially true considering that the UPS PPAs at issue here  
19 seek to defer the addition of generating capacity in 2010. In the spirit of the bid  
20 rule, it is important that all options be explored, as they certainly would be if  
21 additional generating capacity were being built, to ensure that the price of these  
22 agreements is fair, just and reasonable for the ratepayers.

23 **Q. Must the resources contemplated by the UPS PPAs be procured now?**



1 A. It would not appear that the resources contemplated by the UPS PPAs need to  
2 be procured now. The current UPS contracts do not expire until June 1, 2010,  
3 nearly six years from now. Neither FPL nor Progress Energy have provided an  
4 adequate explanation as to why other competitive options were not investigated.  
5 There certainly seems to be enough time to do this and still meet the required  
6 date of June 1, 2010. The primary two components of generating resources  
7 being procured under these UPS PPAs are natural gas combined cycle and coal  
8 generating capacity. Given the rather extensive gas-fired generating resources  
9 located in the southeastern region of the United States and the fact that a new  
10 coal unit would still have time to be constructed to meet an in-service date of  
11 June 1, 2010, it would seem to be in the best interest of the ratepayers of the  
12 state of Florida to explore all alternatives for meeting the need contemplated by  
13 the UPS PPAs to ensure that the best choice is made. Further, the testimony of  
14 the witnesses did not seem to indicate that Southern Company would be  
15 unwilling to negotiate similar type contracts with FPL and Progress Energy at a  
16 date nearer to expiration of the UPS contracts.

17 **Q. Transmission rights appear to be a factor that may be driving these PPAs.**  
18 **Do FPL and Progress Energy have to enter into the UPS PPAs with**  
19 **Southern Company to be entitled to "roll over" their existing transmission**  
20 **rights on the Southern Company side of the Southern/Florida interface?**

21 A. Based on the testimony I reviewed, it is unclear. The testimony of Progress  
22 Energy witness Mr. Waters indicates that access to transmission rights may be  
23 part of the UPS PPAs. Mr. Waters refers to "Access to the transmission facilities

1 provided by the agreement...” and also notes that “...[t]he agreement will  
2 maintain a transmission path to the Southern system...” (Waters Direct  
3 Testimony at 7). However, in Mr. Waters’ Exhibit \_\_\_\_ (SSW-2), the terms of the  
4 Letter of Intent with Southern Company indicate that obtaining transmission  
5 service on the Southern side of the interface is the responsibility of Progress  
6 Energy. From my review of the testimony, there were no additional clarifying  
7 statements regarding the transmission rights; thus these statements seem to  
8 contradict each other and make it unclear what transmission rights Progress  
9 Energy believes it has on the Southern system.

10 In reviewing Mr. Hartman’s testimony, he indicates that FPL will be able to “roll  
11 over” its transmission rights to other sources of energy and capacity, provided  
12 certain conditions are met. These include demonstrating that “...the changed  
13 delivery points (from the existing UPS Agreement to the new contracts) do not  
14 cause substantial changes in the transmission provider’s system flows...”  
15 (Hartman Direct Testimony at 8). Mr. Hartman goes on in his testimony to explain  
16 why he believes FPL will be able to meet this requirement with the new contracts.  
17 Although Mr. Hartman’s testimony in several instances indicates a link between  
18 the UPS PPAs and transmission rights, nothing in Mr. Hartman’s testimony  
19 specifically states that the “roll over” of these transmission rights is contingent on  
20 signing the UPS PPAs with Southern Company. This is just one of several  
21 important issues which the parties and the Commission need to analyze. This  
22 issue is important because if it turns out that the transmission rights may be

1 "rolled over" without execution of these UPS PPAs, then a significant amount of  
2 benefits attributed to execution of the UPS PPAs no longer exists.

3 **Q. Do you agree with the FPL and Progress Energy witnesses as to the**  
4 **importance of retaining firm transmission rights on the Southern side of the**  
5 **interface?**

6 A. Yes. From everything that we have seen in the wholesale power market in the  
7 southeastern United States, access to transmission capacity is vitally important  
8 to utilities to be able to secure competitively priced wholesale power. It would  
9 seem to go without saying that those who control the transmission capacity on  
10 the Southern side of the interface control the flow of wholesale power into Florida  
11 — and currently I believe opportunities for competitive power do exist on the  
12 Southern side of the interface. This is especially important with regard to moving  
13 power into peninsular Florida. Because there is a limited amount of interface  
14 transfer capability and all existing transmission capacity is subscribed on a long-  
15 term firm basis, it would be important for FPL and Progress Energy and their  
16 ratepayers to "roll over" these rights, and thus maintain the transmission rights  
17 that the witnesses' testimony appears to indicate they have paid for as a part of  
18 the existing UPS contracts. However, as I stated earlier it is not clear that the  
19 utilities must enter into these UPS PPAs to retain their firm transmission rights.

20 **Q. Do you believe there is enough time in this docket for affected parties and**  
21 **the Commission to adequately evaluate the reasonableness of the UPS**  
22 **PPAs?**

1 A. No I do not. Both witnesses offer some analytical, as well as subjective, methods  
2 to aid in demonstrating the reasonableness of the UPS contracts. Each of these  
3 methods, no doubt, has substantial assumptions that need to be assessed for  
4 appropriateness. For example, Mr. Hartman's testimony refers to a review of  
5 available generation resources in the southeast. A significant amount of time  
6 would be required to verify the accuracy of the list as well as the assumptions  
7 associated with it, including the reasonableness of eliminating the majority of the  
8 generating resources because of transmission constraints that may or may not  
9 still be in effect in June of 2010.

10 **Q. Do you believe a coal purchase alternative could be available by June 1,**  
11 **2010 in lieu of the purchase from Southern Company?**

12 A. Yes. Based on discussions we have had with engineering and construction  
13 firms, a new coal fired generation facility can be constructed in approximately 42  
14 months. Further, based on our permitting experience, we believe that it is  
15 possible for a new coal-fired generating facility to be permitted in approximately  
16 18 months. Based on these dates, neither FPL nor Progress Energy, nor a  
17 potential entity that they may contract with, would need to begin permitting a new  
18 coal facility until mid-2005 and would not need to begin construction of a new  
19 facility until nearly the end of 2006.

20 Additionally, as previously mentioned, LS Power has completed a  
21 substantial amount of permitting on a coal-fired generating facility in southwest  
22 Georgia. This facility is expected to be fully permitted in the second half of 2005.

23

1 **RECOMMENDED ACTION**

2 **Q. What action do you recommend the Commission take regarding these**  
3 **contracts?**

4 A. I recommend that the Commission allow more time for the evaluation of the  
5 merits of the UPS PPAs by opening a separate docket to consider them.  
6 Because of the relatively truncated nature of this particular docket, it is impossible  
7 to have adequate time for affected parties to prepare discovery requests and  
8 provide expert analysis. When transactions of the magnitude of the UPS PPAs  
9 are at issue, such critical analysis is essential.

10 The Commission addressed the problems raised by the analysis of  
11 complex issues in a truncated proceeding in last year's fuel docket. Chairman  
12 Jaber stated:

13 It seems to me that this administrative process has had its benefits  
14 in terms of efficiencies, but some of these issues aren't as routine  
15 as they've been in the past. So if we could find a way to keep the  
16 issues that are routine in this very expedited process, great, but I  
17 don't like the feeling of being rushed, not having a lot of evidence,  
18 second guessing.<sup>2</sup>

19  
20 Commissioner Deason added:

21  
22 Let me say that I agree with what you're saying. And it's  
23 difficult on the parties, it's difficult on the staff, it's difficult on the  
24 Commissioners to have these very intense, meaningful debates  
25 with evidence and cross-examination on these significant policy  
26 issues within the confines of this once a year November hearing  
27 where we're trying to get fuel factors finalized to be effective  
28 January.

29  
30 And I would just ask Public Counsel, FIPUG, all of the  
31 participants, if there's a better way of doing it, let's think about it.  
32 Maybe the way we're doing it is best, but it just seems to me that  
33 when we start talking about these very significant policy issues, it

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<sup>2</sup> Hearing Transcript, Docket 030001-EI at 1276.

1 would be better to have a little bit more -- the luxury of having a little  
2 bit more time as opposed to being pressed against this deadline  
3 and having to make bench decisions.  
4

5 I'm not critical of what we've just done. Just like the Chair, I  
6 think these issues have been very thoroughly litigated, that the  
7 parties did a superb job in presenting their cases, but we did it in a  
8 very compressed time frame, and we did not have the luxury of  
9 having briefs filed if we thought that would be helpful. We didn't  
10 have the luxury of staff analyzing all of that and coming forward with  
11 a written recommendation. While I applaud staff for your oral  
12 recommendation, I just think that some of these issues would be  
13 better addressed in a more traditional atmosphere, if possible.<sup>3</sup>  
14

15 The same reasoning applies to the complex, long term, multi-million dollar  
16 contracts at issue here.

17 **Q. Does this conclude your testimony?**

18 A. Yes.  
19

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<sup>3</sup> Hearing Transcript, Docket No. 040001-EI. at 1277-78.

## CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing Direct Testimony of Michael F. Vogt on behalf of Florida Industrial Power Users Group has been provided by (\*) hand delivery and U.S. Mail, this 4<sup>th</sup> day of October, 2004, to the following:

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