

ORIGINAL

Matilda Sanders

From: Tim Perry [tperry@mac-law.com]  
Sent: Monday, October 18, 2004 3:21 PM  
To: Filings@psc.state.fl.us  
Subject: Docket No. 040001-EI

1. Timothy J. Perry, McWhirter Reeves, 117 S. Gadsden Street, Tallahassee, FL 32301, (850) 222-2525, [tperry@mac-law.com](mailto:tperry@mac-law.com) is the person responsible for this electronic filing;
2. The filing is to be made in Docket No. 040001-EI, *In re: Fuel and Purchased Power Cost Recovery Clause with Generating Performance Incentive Factor*;
3. The filing is made on behalf of the Florida Industrial Power Users Group;
4. The total number of pages is 13; and
5. Attached to this e-mail in Word and Adobe format is the Florida Industrial Power Users Group's Prehearing Statement of Issues and Positions.

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FPSC-COMMISSION CLERK

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Fuel and Purchased Power  
Cost Recovery Clause with Generating  
Performance Incentive Factor.

Docket No. 040001-EI  
Filed: October 18, 2004

**THE FLORIDA INDUSTRIAL POWER USERS GROUP'S  
PREHEARING STATEMENT OF ISSUES AND POSITIONS**

The Florida Industrial Power Users Group (FIPUG), pursuant to Order No. PSC-04-0161-PCO-EI, files its Prehearing Statement of Issues and Positions.

**A. APPEARANCES:**

**JOHN W. MCWHIRTER, JR.**, McWhirter Reeves McGlothlin Davidson Kaufman & Arnold, P.A., 400 North Tampa Street, Suite 2450, Tampa, Florida 33601-3350 and **JOSEPH A. MCGLOTHLIN, VICKI GORDON KAUFMAN & TIMOTHY J. PERRY**, McWhirter Reeves McGlothlin Davidson Kaufman & Arnold, P.A., 117 South Gadsden Street, Tallahassee, Florida 32301.

**On Behalf of the Florida Industrial Power Users Group.**

**B. WITNESSES:**

<u>Witness</u>	<u>Preferred by</u>	<u>Issues</u>
Kerrick Knauth	FIPUG	13C-13D, 13F, 14A-14C
Michael F. Vogt	FIPUG	13C-13D, 13F, 14A-14C
David E. Dismukes	FIPUG (& Power Systems Manufacturing, L.L.C. & Thomas K. Churbuck)	14A-14C

All witnesses listed by other parties.

**C. EXHIBITS:**

<u>Exhibit</u>	<u>Witness</u>	<u>Description</u>
Attachment 1	David E. Dismukes	C.V. of David E. Dismukes
Exhibit No. __ (DED-1)	David E. Dismukes	Contribution of Contracts to Total Purchase Agreement

Exhibit No. __ (DED-2)	David E. Dismukes	Merchant Facilities Located in Proximity to Contracted Units
Exhibit No. __ (DED-3)	David E. Dismukes	Estimated Natural Gas Transmission Capacity
Exhibit No. __ (DED-4)	David E. Dismukes	Merchant Development in SERC Region
Exhibit No. __ (DED-5)	David E. Dismukes	Merchant Development in SERC by Subregion
Exhibit No. __ (DED-6)	David E. Dismukes	Merchant Development in FRCC Region
Exhibit No. __ (DED-7)	David E. Dismukes	Merchant Facilities Under Construction in SERC
Exhibit No. __ (DED-8)	David E. Dismukes	Merchant Facilities Under Development in SERC
Exhibit No. __ (DED-9)	David E. Dismukes	Merchant Alternatives in SERC
Exhibit No. __ (DED-10)	David E. Dismukes	Planned Transmission Additions (Circuit Miles)

**D. STATEMENT OF BASIC POSITION:**

In addition to the “traditional” fuel issues considered by the Commission each year, several specific issues have arisen which the Commission must consider.

First, Progress Energy and FPL seek Commission approval of Unit Power Sales (UPS) agreements with Southern Company totaling approximately 1400 megawatts. The utilities seek approval of these arrangements six years before the power is needed and without first either soliciting or thoroughly evaluating alternative proposals. Under the Commission’s guaranteed cost recovery mechanisms, consumers bear the full risk of these purchased power contracts. FIPUG companies are captive customers of FPL and Progress Energy. They are entitled to assurance that these utilities have met their fiduciary responsibility to customers to fully survey and analyze all options available to meet the capacity needs of their retail customers at the possible lowest cost. Given the magnitude of these agreements, the fact that the power would not be delivered until 2010, as well as the timing of the utilities’ requests, the appropriate analysis cannot be performed in the truncated annual fuel proceeding, as the Commission recognized in last year’s fuel adjustment proceeding. The Commission should remove all issues related to the purchase power agreements between Progress Energy, FPL and Southern Company for consideration and review in a separate docket. (Issues 13C-13D, 13F, 14A-14C).

Second, in Order No. PSC-04-0999-EI issued in Docket No. 031033-EI, the Commission resolved the issue of TECo's waterborne transportation costs that was spun out from last year's fuel adjustment docket. The Commission determined that the amount TECo is charging consumers for waterborne coal transportation is excessive and directed TECo to make adjustments to those amounts beginning in 2004. Such adjustments have not been made and the Commission should ensure that ratepayers received the appropriate credit for 2004 and that the adjustments are incorporated in the upcoming fuel factor for 2005 as the Order requires. (Issue 17C).

Third, in February and August 2004, TECo acknowledged that it had overstated its 2003 underrecovery estimate by \$39 million. It nevertheless collected the \$39 million from the ratepayers plus monthly interest for both 2003 and 2004 underrecoveries. There is no evidence to indicate that customers received any interest credit for the \$39 million overpayment or why the excess portion \$7,583,954 collected from customers each month was not used reduce the interest charges imposed on retail customers for 2004 underrecoveries. Schedule E-1B attached to the Testimony of J. Denise Jordan, filed August 10, 2004, shows a \$562,438 interest charge to customers. To make the ratepayers whole, TECo must credit its ratepayers the interest on the overcollection. (Issue 17D).

Finally, all customers, including FIPUG members, are entitled to receive sufficient information as to the cost of power passed on to them from the utilities that serve them, including the utilities' wholesale purchases and sales. Publication of the total price paid for wholesale power to each seller will reinforce the Commission mission statement by stimulating the wholesale market. It will draw attention to purchases in which the utility is paying more than market prices and lay the predicate for the utility to explain how retail customers derive benefit from the purchases. Such information should be readily accessible in the utilities' filings in this docket; customers and potential suppliers should not be required to conduct arduous discovery to secure this information. Although the fuel component of wholesale transactions is delineated in the utilities' filings, the same is not true of the capacity portion of these transactions. Captive customers are unable to determine whether the transactions of the utilities, as a whole, are reasonable. Therefore, each investor-owned utility should be required to report its capacity charges and costs, estimated and actual, for wholesale capacity sales and purchases in a schedule similar in format to Schedules E-6, A-6, E-7, A-7, E-8, A-8, E-9, and A-9. (Issue 12).

**E. STATEMENT OF ISSUES AND POSITIONS:**

**GENERIC FUEL ADJUSTMENT ISSUES**

**ISSUE 1:** What are the appropriate fuel adjustment true-up amounts for the period January 2003 through December 2003?

**FIPUG:** No position at this time.

**ISSUE 2:** What are the appropriate fuel adjustment true-up amounts for the period January 2004 through December 2004?

- FIPUG:** No position at this time.
- ISSUE 3:** What are the appropriate total fuel adjustment true-up amounts to be collected/refunded from January 2005 to December 2005?
- FIPUG:** No position at this time.
- ISSUE 4:** What is the appropriate revenue tax factor to be applied in calculating each investor-owned electric utility's levelized fuel factor for the projection period January 2005 through December 2005?
- FIPUG:** No position at this time.
- ISSUE 5:** What are the appropriate projected net fuel and purchased power cost recovery amounts to be included in the recovery factor for the period January 2005 through December 2005?
- FIPUG:** No position at this time. This cannot be determined until the resolution of the company specific issues.
- ISSUE 6:** What are the appropriate levelized fuel cost recovery factors for the period January 2005 through December 2005?
- FIPUG:** No position at this time.
- ISSUE 7:** What are the appropriate fuel recovery line loss multipliers to be used in calculating the fuel cost recovery factors charged to each rate class/delivery voltage level class?
- FIPUG:** No position at this time. This cannot be determined until the resolution of the company specific issues.
- ISSUE 8:** What are the appropriate fuel cost recovery factors for each rate class/delivery voltage level class adjusted for line losses?
- FIPUG:** No position at this time. This cannot be determined until the resolution of the company specific issues.
- ISSUE 9:** What should be the effective date of the fuel adjustment charge and capacity cost recovery charge for billing purposes?
- FIPUG:** The new factors should be effective beginning with the first billing cycle for January 2005 and thereafter through the last billing cycle for December 2005. The first billing cycle may start before January 1, 2005, and the last billing cycle may end after December 30, 2005, so long as each customer is billed for twelve months regardless of when the factors become effective.

**ISSUE 10:** What are the appropriate actual benchmark levels for calendar year 2004 for gains on non-separated wholesale energy sales eligible for a shareholder incentive?

**FIPUG:** No position at this time.

**ISSUE 11:** What are the appropriate estimated benchmark levels for calendar year 2005 for gains on non-separated wholesale energy sales eligible for a shareholder incentive?

**FIPUG:** No position at this time.

**ISSUE 12:** Should each investor-owned utility be required to report its capacity charges and costs, estimated and actual, for wholesale capacity sales and purchases in a schedule similar in format to Schedules E-6, A-6, E-7, A-7, E-8, A-8, E-9, and A-9?

**FIPUG:** Yes. The utilities should be required to file information regarding capacity charges to enable ratepayers to analyze such costs. Ratepayers should not be required to conduct discovery to procure information supporting amounts that the utilities seek to charge. The current capacity schedules should be revised to provide additional information in a format similar to the fuel schedules.

## **COMPANY-SPECIFIC FUEL ADJUSTMENT ISSUES**

### **Progress Energy Florida**

**ISSUE 13A:** Has Progress Energy Florida confirmed the validity of the methodology used to determine the equity component of Progress Fuels Corporation's capital structure for calendar year 2003?

**FIPUG:** No position at this time.

**ISSUE 13B:** Has Progress Energy Florida properly calculated the 2003 price for waterborne transportation services provided by Progress Fuels Corporation?

**FIPUG:** No position at this time.

**ISSUE 13C:** Should the Commission defer all issues related to the purchased power agreements between Progress Energy Florida and Shady Hills Power Company, LLC and Progress Energy Florida and Southern Company to a separate docket?

**FIPUG:** Yes, as to the agreement between Progress Energy and Southern Company. Due to the magnitude of the megawatts, the time frame (2010) for the delivery of the power, the need for thorough analysis, and the fact that Progress Energy has not finalized the contract as of this date, the issues related to the Southern UPS contracts should be considered in a separate docket. FIPUG takes no position on the Progress/Shady Hills contract.

**ISSUE 13D:** If the Commission does not defer all issues related to the purchased power agreements to a separate docket, should the Commission require Progress Energy Florida to explore alternatives in the wholesale market prior to seeking approval of the purchased power agreements?

**FIPUG:** Yes. Ratepayers are entitled to reasonable assurances that Progress Energy has fully surveyed and analyzed all options available to meet the capacity needs of its retail customers at the lowest possible cost.

**ISSUE 13E:** If the Commission does not defer all issues related to the purchased power agreements to a separate docket, should the Commission approve the tolling agreement between Progress Energy Florida and Shady Hills Power Company, LLC for cost recovery purposes?

**FIPUG:** No position at this time.

**ISSUE 13F:** If the Commission does not remove the proposed issues related to the purchase power agreements between Progress Energy Florida and Southern Company, has Progress Energy adequately supported its request for approval of the proposed agreements?

[If the Commission does not defer all issues related to the purchased power agreements to a separate docket, should the Commission approve the Unit Power Sales (UPS) agreement between Progress Energy Florida and Southern Company for cost recovery purposes?]\*

**FIPUG:** No. Progress Energy has failed to demonstrate that it has thoroughly analyzed all available options and that the proposed agreements meet the capacity needs of its retail customers at the lowest possible cost.

**ISSUE 13G:** Pursuant to Order No. PSC-93-1331-FOF-EI, in Docket No. 930001-EI, issued September 13, 1993, should the Commission make an adjustment to Progress Energy Florida's 2002 and 2003 waterborne coal transportation costs to account for upriver costs from mine to barge for coal commodity contracts which are quoted FOB Barge?

**FIPUG:** No position at this time.

**ISSUE 13H:** Pursuant to Order No. PSC-94-0390-FOF-EI, in Docket No. 940001-EI, issued April 4, 1994, should the Commission make an adjustment to Progress Energy Florida's 2001-2003 waterborne coal transportation costs to account for transloading costs for coal commodity contracts which are quoted FOB Barge?

**FIPUG:** No position at this time.

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\* Where FIPUG and Staff's proposed language for an issue differs, Staff's proposed language is shown in brackets.

**ISSUE 13I:** Pursuant to Order No. PSC-04-0713-AS-EI, in Docket No. 031057-EI, issued July 20, 2004, has Progress Energy Florida made the appropriate adjustments to its 2004 and 2005 waterborne coal transportation costs for recovery purposes?

**FIPUG:** No position at this time.

**ISSUE 13J:** Has Progress Energy Florida provided sufficient evidence of fuel savings to justify charging depreciation and a return in the amount of approximately \$37 million related to the Hines plant?

**FIPUG:** No position at this time.

### **Florida Power & Light Company**

**ISSUE 14A:** Should the Commission defer all issues related to the purchased power agreements between FPL and Southern Company to a separate docket?

**FIPUG:** Yes. First, the purpose of this proceeding is to set the 2005 fuel factors. The UPS contracts for which FPL seeks "preapproval" are not effective until 2010; thus, FPL's attempt to include them in this docket should be rejected. Further, given the magnitude of the transactions at issue, the ample time available with which FPL can evaluate alternatives available in the wholesale market, and the truncated time for review in the fuel adjustment docket, these transactions should be thoroughly analyzed in a separate proceeding.

**ISSUE 14B:** If the Commission does not defer all issues related to the purchased power agreements to a separate docket, should the Commission require FPL to explore alternatives in the wholesale market prior to seeking approval of the purchased power agreements?

**FIPUG:** Yes. Ratepayers are entitled to reasonable assurances that FPL has fully surveyed and analyzed all options available to meet the capacity needs of its retail customers at the lowest possible cost. FPL has failed to provide evidence that it has done so.

**ISSUE 14C:** If the Commission does not remove the issues related to the purchase power agreements between FPL and Southern Company, has FPL adequately supported its request for approval of the proposed agreements?

[Should the Commission approve the three UPS agreements between FPL and Southern Company for cost recovery purposes?]\*

**FIPUG:** No. FPL has not demonstrated that it has adequately explored and analyzed all alternatives to meet the needs of its ratepayers and that the agreements meet the capacity needs of its retail customers at the lowest possible cost.



**Florida Public Utilities Company**

**ISSUE 15A:** Should the Commission adjust FPUC's true-up balances to account for the unbundling of the Gross Receipts Tax from FPUC's base rates by Order No. PSC-04-0369-AS-EI, in Docket No. 030438-EI, issued April 6, 2004?

**FIPUG:** No position at this time.

**Tampa Electric Company**

**ISSUE 17A:** What is the appropriate 2003 waterborne coal transportation benchmark price for transportation services provided by affiliates of Tampa Electric Company?

**FIPUG:** No position at this time.

**ISSUE 17B:** Has Tampa Electric Company adequately justified any costs associated with transportation services provided by affiliates of Tampa Electric Company that exceed the 2003 waterborne transportation benchmark price?

**FIPUG:** No position at this time.

**ISSUE 17C:** Pursuant to Order No. PSC-04-0999-FOF-EI, in Docket No. 031033-EI, issued October 12, 2004, has Tampa Electric Company made the appropriate adjustments to its 2004 and 2005 waterborne coal transportation costs for recovery purposes?

[Based on the Commission's decision at the September 21, 2004, Agenda Conference in Docket No. 031033-EI, has Tampa Electric Company made the appropriate adjustments to its 2004 and 2005 waterborne coal transportation costs for recovery purposes?]\*

**FIPUG:** No. The Commission's Order requires TECo to provide a credit to ratepayers for the 2004 overcharges for waterborne transportation and to reflect the Commission ordered adjustments in the 2005 fuel factor.

**ISSUE 17D:** In February and August 2004, Tampa Electric acknowledged that its 2003 under recovery estimate was over stated by \$39,039,043. Jordan Exhibit E-1B, filed August 10, 2004, appears to charge interest on the 2004 under collections, but gives consumers no interest payment credit for their 2003 over payments to Tampa Electric. Should consumers be credited for their interest overpayment?

[Has Tampa Electric calculated the appropriate interest on its 2003 over-recovery balance?]\*

**FIPUG:** Yes.

**ISSUE 17E:** Are the fuel charges Tampa Electric expects to incur for its wholesale energy purchases from Hardee Power Partners for 2005 reasonable?

**FIPUG:** No position at this time.

**ISSUE 17F:** Should the Commission approve Tampa Electric's purchased power agreement for 150 MW of non-firm energy referenced in Benjamin F. Smith's direct testimony for cost recovery purposes?

**FIPUG:** No. TECo has provided no information about this transaction and thus has failed to carry its burden to show that the agreement meets the ratepayers' needs at the lowest possible cost.

### **GENERIC GENERATING PERFORMANCE INCENTIVE FACTOR ISSUES**

**ISSUE 18:** What is the appropriate generation performance incentive factor (GPIF) reward or penalty for performance achieved during the period January 2003 through December 2003 for each investor-owned electric utility subject to the GPIF?

**FIPUG:** No position at this time.

**ISSUE 19:** What should the GPIF targets/ranges be for the period January 2005 through December 2005 for each investor-owned electric utility subject to the GPIF?

**FIPUG:** No position at this time.

### **COMPANY-SPECIFIC GENERATING PERFORMANCE INCENTIVE FACTOR ISSUES**

#### **Gulf Power Company**

**ISSUE 22A:** Should the Commission approve the generating units proposed by Gulf Power Company for the company's 2005 GPIF units?

**FIPUG:** No position at this time.

**ISSUE 22B:** Should the Commission consider excluding the Daniel units from the 2004 GPIF reward/ penalty calculation due to the burning of low Btu coal at those units in some months?

**FIPUG:** No position at this time.

**ISSUE 22C:** Should the Commission approve the exclusion of the Daniel units from the 2005 heat rate targets?

**FIPUG:** No position at this time.

## **GENERIC CAPACITY COST RECOVERY FACTOR ISSUES**

**ISSUE 24:** What are the appropriate capacity cost recovery true-up amounts for the period January 2003 through December 2003?

**FIPUG:** No position at this time.

**ISSUE 25:** What are the appropriate capacity cost recovery true-up amounts for the period January 2004 through December 2004?

**FIPUG:** No position at this time.

**ISSUE 26:** What are the appropriate total capacity cost recovery true-up amounts to be collected/refunded during the period January 2005 through December 2005?

**FIPUG:** No position at this time.

**ISSUE 27:** What are the appropriate projected net purchased power capacity cost recovery amounts to be included in the recovery factor for the period January 2005 through December 2005?

**FIPUG:** No position at this time.

**ISSUE 28:** What are the appropriate jurisdictional separation factors for capacity revenues and costs to be included in the recovery factor for the period January 2005 through December 2005?

**FIPUG:** No position at this time.

**ISSUE 29:** What are the appropriate capacity cost recovery factors for the period January 2005 through December 2005?

## **COMPANY-SPECIFIC CAPACITY COST RECOVERY FACTOR ISSUES**

### **Progress Energy Florida**

**ISSUE 30A:** Are Progress Energy Florida's actual and projected expenses for 2003 through 2005 for its post-September 11, 2001, security measures reasonable for cost recovery purposes?

**FIPUG:** No position at this time.

### **Florida Power & Light Company**

**ISSUE 31A:** Are Florida Power & Light's actual and projected expenses for 2003 through 2005

for its post-September 11, 2001, security measures reasonable for cost recovery purposes?

**FIPUG:** No position at this time.

**Tampa Electric Company**

**ISSUE 33A:** Are Tampa Electric Company's actual and projected expenses for 2003 through 2005 for its post-September 11, 2001, security measures reasonable for cost recovery purposes?

**FIPUG:** No position at this time.

**F. STIPULATED ISSUES:**

None.

**G. PENDING MOTIONS:**

FIPUG has two pending motions:

1. Joint Motion of the Citizens of the State of Florida and the Florida Industrial Power Users Group to Remove Issues Related to Proposed Unit Power Sales Agreements from the Fuel Adjustment Docket; and
2. Joint Request of the Citizens of the State of Florida and the Florida Industrial Power Users Group for Oral Argument on Joint Motion of the Citizens of the State of Florida and the Florida Industrial Power Users Group to Remove Issues Related to Proposed Unit Power Sales Agreements from the Fuel Adjustment Docket

**H. OTHER MATTERS:**

None at this time.

s/ Timothy J. Perry

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Attorneys for the Florida Industrial  
Power Users Group

**CERTIFICATE OF SERVICE**

**I HEREBY CERTIFY** that a true and correct copy of the foregoing Florida Industrial Power Users Group's Prehearing Statement of Issues and Positions has been furnished by electronic mail and U.S. Mail this 18<sup>th</sup> day of October 2004, to the following:

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