

ORIGINAL

Timolyn Henry

From: Tim Perry [tperry@mac-law.com]
Sent: Monday, November 01, 2004 4:05 PM
To: Filings@psc.state.fl.us
Subject: Docket 040001-EI -- Interrogatories

1. Timothy J. Perry, McWhirter Reeves, 117 S. Gadsden Street, Tallahassee, FL 32301, (850) 222-2525, tperry@mac-law.com is 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 6; and
5. Attached to this e-mail in Adobe format is the Florida Industrial Power Users Group's Objections and Responses to Florida Power & Light Company's (FPL) First Set of Interrogatories (Nos. 1-6)

Timothy J. Perry
McWhirter Reeves
117 S. Gadsden St.
Tallahassee, FL 32301
(850) 222-2525
(850) 222-5606 - Fax
tperry@mac-law.com

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ORIGINAL

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: November 1, 2004

**THE FLORIDA INDUSTRIAL POWER USERS GROUP'S
OBJECTIONS AND RESPONSES TO FLORIDA POWER & LIGHT COMPANY'S
FIRST SET OF INTERROGATORIES (NOS. 1-6)**

Pursuant to Rule 28-106.206, Florida Administrative Code, and Rules 1.280 and 1.340, Florida Rules of Civil Procedure, the Florida Industrial Power Users Group (FIPUG), submits its Objections and Responses to Florida Power & Light Company's (FPL) First Set of Interrogatories (Nos. 1-6).

OBJECTIONS TO DEFINITIONS

FIPUG objects to FPL's definition of "FIPUG." FPL's definition of "FIPUG" inappropriately attempts to include FIPUG's attorneys. FIPUG objects to this definition on the grounds that it is harassing, annoying, and oppressive. Further, any such information in the possession, custody or control of FIPUG's attorneys would be protected by the attorney-client privilege and/or work product privilege. Additionally, given the breadth and irrelevance of many of the questions, any such documents may not be within FIPUG's custody or control.

INTERROGATORIES

1. Identify the members of FIPUG for the time period 2002 through 2004.

ANSWER: FIPUG is an "ad hoc" organization with no general membership. From time to time, industrial and large commercial customers come together to share the cost of intervening in regulatory matters which affect their interests vis-a-vis particular utility companies. Thus, at different times and in different matters, different companies participate in FIPUG activities. With this explanation of FIPUG's structure, the following companies are FPL customers who have authorized FIPUG to represent them in this proceeding:

AirLiquide
Praxair
DuPont

Publix Supermarkets, Inc.
Cape Canaveral Space Center
University of Miami

Mosaic Company

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2. Identify any members of FIPUG who have engaged or currently engage in the business of selling power on the wholesale power market for the time period 2002 through 2004.

OBJECTION: The issues to which this discovery purportedly relates concern FPL's request that the Commission "preapprove" UPS purchase power contracts that it proposes to enter into with Southern Company which do not take effect until 2010. As a preliminary matter, such issues do not even belong in the fuel docket, where fuel factors for 2005 will be set. Beyond that, FPL has the burden to prove that it has thoroughly analyzed all options for needed capacity and that the contracts for which it seeks approval are the most cost-effective choice.

FIPUG objects to this interrogatory because it is harassing, annoying, oppressive, irrelevant and is not reasonably calculated to lead to the discovery of admissible evidence.

3. Identify any clients of the law firm McWhirter, Reeves, McGlothlin, Davidson Kaufman & Arnold, P.A., that engage in the business of selling power on the wholesale power market.

OBJECTION: The issues to which this discovery purportedly relates concern FPL's request that the Commission "preapprove" UPS purchase power contracts that it proposes to enter into with Southern Company which do not take effect until 2010. As a preliminary matter, such issues do not even belong in the fuel docket, where fuel factors for 2005 will be set. Beyond that, FPL has the burden to prove that it has thoroughly analyzed all options for needed capacity and that the contracts for which it seeks approval are the most cost-effective choice. Interrogatory No. 3 has nothing to do with that issue.

FIPUG objects to this interrogatory as invalid on its face because it is harassing, annoying, oppressive, irrelevant and is not reasonably calculated to lead to the discovery of admissible evidence. FIPUG further objects to this interrogatory as invalid on its face on the grounds that such information would be protected by the attorney-client privilege. FIPUG further objects because such information is not in FIPUG's possession, custody or control.

In addition, the law firm of McWhirter Reeves objects to providing a list of its clients as such information is irrelevant, is not reasonably calculated to lead to the discovery of admissible evidence, and would be protected by the attorney client privilege. Further, the interrogatory is as invalid on its face because it is harassing, annoying and oppressive.

4. Identify and describe in detail the circumstances under which FIPUG agreed to be a sponsor of the testimony of Mr. David E. Dismukes, in Docket No. 040001-EI.

OBJECTION: The issues to which this discovery purportedly relates concern FPL's request that the Commission "preapprove" UPS purchase power contracts that it proposes to enter into with Southern Company which do not take effect until 2010. As a preliminary matter,

such issues do not even belong in the fuel docket, where fuel factors for 2005 will be set. Beyond that, FPL has the burden to prove that it has thoroughly analyzed all options for needed capacity and that the contracts for which it seeks approval are the most cost-effective choice. Interrogatory No. 4 has nothing to do with that issue. Further, as a party to this proceeding, FIPUG is entitled to sponsor relevant and competent testimony of its choosing. It has no obligation to divulge its hearing strategy to FPL as such information is work product.

Thus, FIPUG objects to this interrogatory as invalid on its face because it is harassing, annoying, oppressive, irrelevant and is not reasonably calculated to lead to the discovery of admissible evidence. FIPUG further objects to this interrogatory as invalid on its face on the grounds that such information would be protected by the attorney-client privilege and the work product privilege.

5. Identify and describe in detail the circumstances under which FIPUG or its counsel were introduced to Kerrick Knauth, including (a) the date when FIPUG or its counsel first met Mr. Knauth; (b) the circumstances surrounding the first time FIPUG or its counsel met Mr. Knauth; (c) the circumstances under which Mr. Knauth agreed to provide testimony on behalf of FIPUG in Docket No. 040001-EI.

OBJECTION: The issues to which this discovery purportedly relates concern FPL's request that the Commission "preapprove" UPS purchase power contracts that it proposes to enter into with Southern Company which do not take effect until 2010. As a preliminary matter, such issues do not even belong in the fuel docket, where fuel factors for 2005 will be set. Beyond that, FPL has the burden to prove that it has thoroughly analyzed all options for needed capacity and that the contracts for which it seeks approval are the most cost-effective choice. Interrogatory No. 5 has nothing to do with that issue. Further, as a party to this proceeding, FIPUG is entitled to sponsor relevant and competent testimony of its choosing. It has no obligation to divulge its hearing strategy to FPL as such information is work product.

Thus, FIPUG objects to this interrogatory as invalid on its face because it is harassing, annoying, oppressive, irrelevant and is not reasonably calculated to lead to the discovery of admissible evidence. FIPUG further objects to this interrogatory as invalid on its face on the grounds that such information would be protected by the attorney client privilege and the work product privilege.

In addition, the law firm of McWhirter Reeves objects to this interrogatory as such information is irrelevant, is not reasonably calculated to lead to the discovery of admissible evidence, and would be protected by the attorney-client privilege and work product privilege. Further, the interrogatory is invalid on its face on the grounds that it is harassing, annoying and oppressive.

6. Identify and describe in detail the circumstances under which FIPUG or its counsel were introduced to Michael F. Vogt, including (a) the date when FIPUG or its counsel

first met Mr. Vogt; (b) the circumstances surrounding the first time FIPUG or its counsel met Mr. Vogt; (c) the circumstances under which Mr. Vogt agreed to provide testimony on behalf of FIPUG in Docket No. 040001-EI.

OBJECTION: The issues to which this discovery purportedly relates concern FPL's request that the Commission "preapprove" UPS purchase power contracts that it proposes to enter into with Southern Company which do not take effect until 2010. As a preliminary matter, such issues do not even belong in the fuel docket, where fuel factors for 2005 will be set. Beyond that, FPL has the burden to prove that it has thoroughly analyzed all options for needed capacity and that the contracts for which it seeks approval are the most cost-effective choice. Interrogatory No. 6 has nothing to do with that issue. Further, as a party to this proceeding, FIPUG is entitled to sponsor relevant and competent testimony of its choosing. It has no obligation to divulge its hearing strategy to FPL as such information is work product.

Thus, FIPUG objects to this interrogatory as invalid on its face because it is harassing, annoying, oppressive, irrelevant and is not reasonably calculated to lead to the discovery of admissible evidence. FIPUG further objects to this interrogatory as invalid on its face on the grounds that such information would be protected by the attorney client privilege and the work product privilege.

In addition, the law firm of McWhirter Reeves objects to this interrogatory as such information is irrelevant, is not reasonably calculated to lead to the discovery of admissible evidence, and would be protected by the attorney-client privilege and work product privilege. Further, the interrogatory is invalid on its face on the grounds that it is harassing, annoying and oppressive.

s/ Timothy J. Perry
John W. McWhirter
McWhirter, Reeves, McGlothlin, Davidson,
Kaufman, & Arnold, P.A.
400 North Tampa Street, Suite 2450
Tampa, Florida 33602
Telephone: (813) 224-0866
Telecopier: (813) 221-1854
jmcwhirter@mac-law.com

Joseph A. McGlothlin
Vicki Gordon Kaufman
Timothy J. Perry
McWhirter, Reeves, McGlothlin, Davidson,
Kaufman, & Arnold, P.A.
117 South Gadsden Street
Tallahassee, Florida 32301
(850) 222-2525 (telephone)
(850) 222-5606 (fax)
jmcglothlin@mac-law.com
vkaufman@mac-law.com
tperry@mac-law.com

Attorneys for 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 Response to Florida Power & Light Company's First Set of Interrogatories (Nos. 1-6) has been furnished by electronic mail, U.S. Mail and (*) Federal Express this 1st day of November 2004, to the following:

Adrienne Vining
Wm. Cochran Keating IV
Florida Public Service Commission
Division of Legal Services
2540 Shumard Oak Boulevard
Tallahassee, Florida 32399-0850

Harold McLean
Patricia A. Christensen
Office of the Public Counsel
111 West Madison Street
Room 812
Tallahassee, Florida 32399

(*) John T. Butler
Steel Hector & Davis LLP
200 S. Biscayne Boulevard
Suite 4000
Miami, Florida 33131-2398

Lee L. Willis
James D. Beasley
Ausley & McMullen
227 S. Calhoun Street
Tallahassee, Florida 32302

Jeffrey A. Stone
Beggs & Lane
Post Office Box 12950
Pensacola, Florida 32591

James A. McGee
100 Central Avenue, Suite CX1D
St. Petersburg, Florida 33701

Norman H. Horton
Messer, Caparello & Self
215 South Monroe Street
Suite 701
Tallahassee, Florida 32302

John T. English
Florida Public Utilities Company
Post Office Box 3395
West Palm Beach, Florida 33402

Michael B. Twomey
Post Office Box 5256
Tallahassee, Florida 32314-5256

Jon Moyle
Moyle, Flanigan, Raymond, & Sheean
The Perkins House
118 North Gadsden Street
Tallahassee, Florida 32301

s/ Timothy J. Perry
Timothy J. Perry