

ORIGINAL

Timolyn Henry

From: DAVIS.PHYLLIS [DAVIS.PHYLLIS@leg.state.fl.us]
Sent: Thursday, October 20, 2005 3:40 PM
To: Filings@psc.state.fl.us
Cc: CHRISTENSEN.PATTY; POUCHER.EARL; Adrienne Vining; Bill_Walker@fpl.com; gperko@hgslaw.com; james.mcgee@pgnmail.com; JAS@beggslane.com; jmcwhirter@mac-law.com; jmoylejr@moylelaw.com; john.butler@steelhector.com; Jennifer Rodan; lwillis@ausley.com; mark_hoffmann@csx.com; Norman Horton; RegDept@Tecoenergy.com; schef@landersandparsons.com; sdriteno@southernco.com; southflorida@fpuc.com; tompsi@aol.com; tperry@mac-law.com; Wade_Litchfield@fpl.com

Attachments: Motion Opposition to temporary protective order FPUC102005.doc

On behalf of Patricia A. Christensen, Office of Public Counsel
 111 W. Madison Street, Room 812
 Tallahassee, FL 32399-1400
 Email: Christensen.patty@leg.state.fl.us
 Phone: (850) 488-9330
 Fax: (850) 488-4491

1. This filing is to be made in Docket Number: 050001-EI, In Re: Fuel and Purchased Power Cost Recovery Clause with Generating Performance Incentive Factor
2. Attached for filing on behalf of Office of Public Counsel is OPC's Response in Opposition to FPUC's Motion For Protective Order
3. There are a total of three (5) pages for filing

Phyllis W. Davis

CMP _____

COM 6

CTR _____

ECR _____

GCL _____

OPC _____

RCA _____

SCR _____

SGA _____

SEC 1

OTH _____

DOCUMENT NUMBER-DATE

10210 OCT 20 05

10/20/2005

FPSC-COMMISSION CLERK

ORIGINAL

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In Re: Fuel and Purchased Power)	
Cost Recovery Clause with)	DOCKET NO. 050001-EI
Generating Performance Incentive)	FILED: October 20, 2005
Factor)	
_____)	

**OPC'S RESPONSE IN OPPOSITION TO
FPUC'S MOTION FOR PROTECTIVE ORDER**

The Citizens of the State of Florida, through the Office of Public Counsel (OPC), hereby files its Response in Opposition to FPUC's Motion for Protective Order. In support of this motion, OPC states:

1. In this proceeding, the Commission has scheduled a hearing for November 7, 2005, to consider the electric utilities' pending petitions for approval of true-up amounts for 2005 and cost projections for 2006. In its 2006 projection testimony filed September 9, 2005, FPUC included testimony regarding its proposed fuel surcharge to offset the future "rate shock" due to the expiration of its current fuel contracts at the end of 2007. In its fuel docket petition and testimony, FPUC requests that the Commission approve this "future" fuel surcharge.

2. On September 23, 2005, Staff served its Fourth Set of Interrogatories and Second Request for Production of Documents on FPUC relating to FPUC's RFPs for contracts to replace the contracts expiring at end of 2007. OPC also served its Third Request for Production of Document requesting all of the responses to discovery served on FPUC by Staff including Staff's Second Request for Production of Documents.

DOCUMENT NUMBER-DATE

10210 OCT 20 05

FPSC-COMMISSION CLERK

3. On October 13, 2005, FPUC filed its Motion for Protective Order. In its Motion, FPUC claims that the discovery has absolutely nothing to do with the calculation of the fuel adjustment factor or with the additive. FPUC asserts that Staff, the Commission, and OPC can evaluate its proposed fuel adjustment factor based on the schedules it has filed in this docket and the RFP information is irrelevant to the issues in this docket.

4. Contrary to FPUC's assertion that the RFP's on the 2008 contracts have nothing to do with the issues in this docket, the 2008 contracts are extremely relevant to the issue of whether or not its proposed fuel surcharge "additive" should be approved. The proposed fuel surcharge is being requested to off-set the increase in electric rates at the expiration of the current contracts by anticipating the rates in the new 2008 contract(s). Thus, it would be imperative to know what the terms and conditions of the new 2008 contract(s) are to evaluate the amount of the proposed fuel surcharge. Since FPUC has yet to finalize the 2008 contracts, the best information available is from the RFPs.

5. So long as FPUC's request for a "future" fuel surcharge remains in this docket, OPC and Staff are entitled to this information. OPC has no objection to reasonable guidelines to ensure the confidential nature of the information. Due to the lateness of FPUC's motion, OPC requests that this matter be addressed immediately and, if FPUC's motion is denied, that FPUC be required to produce the information within 24 to 48 hours. Further, OPC requests that it be allowed to conduct a deposition, if necessary, on the issue of the fuel surcharge proposal after the information has been provided and the company be required to make the appropriate persons available.

WHEREFORE, OPC requests the Commission deny FPUC Motion for Protective Order and require FPUC to produce the information to OPC and Staff. Further, asks that the Commission allow a deposition as described above prior to hearing.

Harold McLean
Public Counsel

s/Patricia A. Christensen
Patricia A. Christensen
Florida Bar No. 989789
Office of Public Counsel
c/o The Florida Legislature
111 West Madison Street, Room 812
Tallahassee, FL 32399-1400
(850) 488-9330

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing OPC'S RESPONSE IN OPPOSITION TO FPUC'S MOTION FOR PROTECTIVE ORDER has been furnished by electronic mail and U.S. Mail on this 20th day of October, 2005, to the following:

James Beasley
Lee Willis
Ausley Law Firm
P.O. Box 391
Tallahassee, FL 32302

R. Wade Litchfield
Florida Power & Light Company
700 Universe Boulevard
Juno Beach, FL 33408-0420

Bill Walker
Florida Power & Light Company
215 S. Monroe Street, Suite 818
Tallahassee, FL 32301-1859

Norman H. Horton, Jr.
Floyd R. Self
Messer Law Firm
Post Office Box 1876
Tallahassee, FL 32302-1876

Glenn Alexander
Progress Energy Florida, Inc.
P.O. Box 14042
St. Petersburg, FL 33733-4042

Susan D. Ritenour
Richard McMillan
Gulf Power Company
One Energy Place
Pensacola, FL 32520-0780

Tim Perry
McWhirter Reeves Law Firm
117 S. Gadsden Street
Tallahassee, FL 32301

Angela Llewellyn
Tampa Electric Company
P.O. Box 111
Tampa, FL 33602-0111

John T. Butler, P.A.
Steel Law Firm
200 S. Biscayne Blvd., Suite 4000
Miami, FL 33131-2398

Moyle Law Firm
Jon C. Moyle
118 N. Gadsden Street
Tallahassee, FL 32301

Jennifer Rodan
Adrienne Vining
Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, FL 32399-0850

Thomas K. Churbuck
911 Tamarind Way
Boca Raton, FL 33486

John McWhirter, Jr.
McWhirter Reeves Law Firm
400 North Tampa Street, Suite 2450
Tampa, FL 33602

Hopping Law Firm
Gary V. Perko
P.O. Box 6526
Tallahassee, FL 32314

Black & Veatch
Myron Rollins
11401 Lamar Avenue
Overland Park, KS 66211

Florida Public Utilities Company
Cheryl Martin
P.O. Box 3395
West Palm Beach, FL 33402-3395

Landers Law Firm
Robert Scheffel Wright
John T. LaVia, III
P.O. Box 271
Tallahassee, FL 32302

Beggs & Lane Law Firm
Jeffrey A. Stone
Russell Badders
P.O. Box 12950
Pensacola, FL 32591

CSX Transportation, Inc.
Mark Hoffman
500 Water Street, 14th Floor
Jacksonville, FL 32202

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

s/Patricia A. Christensen
Patricia A. Christensen
Associate Public Counsel