

ORIGINAL

Matilda Sanders

From: DAVIS.PHYLLIS [DAVIS.PHYLLIS@leg.state.fl.us]
Sent: Tuesday, November 01, 2005 4:46 PM
To: Filings@psc.state.fl.us
Cc: CHRISTENSEN.PATTY; POUCHER.EARL; McGLOTHLIN.JOSEPH; MERCHANT.TRICIA; Adrienne Vining; Bill_Walker@fpl.com; gperko@hgslaw.com; JAS@beggsllane.com; jmcwhirter@mac-law.com; jmoylejr@moylelaw.com; john.butler@steelhector.com; Jennifer Rodan; lwillis@ausley.com; mark_hoffmann@csx.com; Norman Horton; R. Alexander Glenn; RegDept@Tecoenergy.com; schef@landersandparsons.com; sdriteno@southernco.com; southflorida@fpuc.com; tompsi@aol.com; tperry@mac-law.com; Wade_Litchfield@fpl.com

Attachments: OPC Motion for Summary Final Order or Defer Ruling.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 the Office of Public Counsel is OPC's Motion for Summary Final Order, or in the Alternative, Motion to Defer Ruling Until Service Hearing Held.
3. There are a total of three (7) pages for filing

Phyllis W. Davis

CMP _____
 COM 5
 CTR _____
 ECR _____
 GCL _____
 OPC _____
 RCA _____
 SCR _____
 SGA _____
 SEC 1
 OTH Kump

11/1/2005

DOCUMENT NUMBER-DATE
 10604 NOV-1 05
 PSC-COMMISSION OF ELECTRICITY

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

| | | |
|----------------------------------|---|-------------------------|
| In Re: Fuel and Purchased Power |) | |
| Cost Recovery Clause with |) | DOCKET NO. 050001-EI |
| Generating Performance Incentive |) | FILED: November 1, 2005 |
| Factor |) | |
| _____ |) | |

**OPC'S MOTION FOR SUMMARY FINAL ORDER, OR IN THE
ALTERNATIVE, MOTION TO DEFER RULING UNTIL
SERVICE HEARING HELD**

The Citizens of the State of Florida, through the Office of Public Counsel (OPC), hereby files its Motion for Summary Final Order, or in the Alternative, Motion to Defer Ruling Until Service Hearing Held. In support of this motion, OPC states:

BACKGROUND

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.¹

2. On October 5 and 6, 2005, customer meetings were held in Fernandina Beach and Marianna on FPUC's proposal. While no customer testimony was taken, the

¹ Prior to this proceeding, FPUC filed its Petition to Implement Fuel Adjustment Surcharge on May 6, 2005, requesting approval of the same "future" fuel surcharge proposal to mitigate against the expected future increase at the expiration of the current fuel contracts. The Commission established Docket No. 050317-EI and several meetings were held between staff, OPC and the company. On October 14, 2005, FPUC withdrew its petition for the fuel surcharge in Docket No. 050317-EI.

DOCUMENT NUMBER-DATE

10604 NOV-13

FPSC-COMMISSION CLERK

customers offered comments on the proposed “future” fuel surcharge, most of which were negative toward FPUC’s “future” fuel surcharge. The customers objected to FPUC’s proposal to collect money for a future purpose. Some of the concerns raised by the customers were that the program lacked a mechanism to return money to the customer if that customer left before the entire term of the program and the possibility that some customers could benefit without contributing. No service hearings have been scheduled in this matter and OPC’s request to “spin-off” this matter was denied at the Prehearing Conference.

ARGUMENT

3. There is no genuine issue of material fact at issue in this proceeding regarding the issue of the “future” rate surcharge that FPUC is requesting as set forth in its petition and prefiled testimony. FPUC is proposing to collect from its customers money to cover the future cost of fuel over the next two years to offset expected increases in fuel cost component of any new purchase power contracts upon the expiration of the Company’s current purchase power contracts at the end of 2007. The cost of fuel in FPUC’s current purchase power agreement are fixed whereas, FPUC anticipates in its petition that in any future purchase power agreements the fuel cost component will reflect market prices. Then the Company expects to flow back the money it has collected in 2006 and 2007 to the customers on a customer group basis over the remaining three years until its rates reach the market price. FPUC plan calls for assessing the surcharge based on customer usage and customer groups. Taking FPUC’s plan at face value as presented in the petition and its prefiled testimony, the plan is unjust and unreasonable within the meaning and intent of Sections 366.06 and 366.07, Florida Statutes. The Commission has no

authority to approve unjust and unreasonable rates and charges such as the one presented in FPUC's plan.

4. FPUC's plan is fatally flawed and would lead to unjust and unreasonable rates and charges. The plan proposes to increase customer rates in 2006 and 2007 for future costs that are not known by the Company or its customers because the Company has not signed an agreement for purchased power after December 31, 2007. The plan creates intergenerational inequities and potential subsidization within classes of customers.

5. Based on FPUC's representation of its plan, it leads to intergeneration inequities in several ways. First, the plan has no mechanism for providing a refund should a customer leave the system before conclusion of the timeframe of the plan. Under the plan, a customer pays a higher rate than the actual current cost of fuel for the next two years. If that customer leaves the system before the expiration of the three year pay back timeframe, he would not receive the benefit of the money he put into the system to "offset" any rate shock he might experience.

In addition, the plan allows for customers who come on to the system any time after its initiation to receive the full benefit of the "offset" without paying in the full benefit. In other words, a customer under this plan can come on to the system after the two year collection period and receive reduced rates paid for by other customers.

This plan makes no provision for tracking those who pay into the fund, and it has no method to ensure that a customer who did not pay into the fund does not benefit. The plan sets up a classic intergenerational inequity were the current class of customers pay for something that will be a benefit to a future group of customers. This result is

unreasonable and unjust. Since the plan leads to this result, the plan is unjust and unreasonable for this reason.

6. The FPUC plan also leads to potential subsidization within classes of customers. As noted above, current customers who pay into the fund may end up financing future customers who did not pay into the fund. Additionally, the charge is based on usage. If a customer's usage changes significantly over the next several years, that customer could end up either being subsidized or subsidizing other customers. If his usage drops after two years, he will not get the full benefit of the monies he paid into the fund. If his usage increases after two years, other customers end up paying for his increased usage. Again this creates an unjust and unreasonable result. In contrast, if the plan is not approved, each customer will pay for the electricity he uses today based on the current fuel factor and any future electricity based on the future fuel factor.

7. Since the plan on its face results in unjust and unreasonable rates, the Commission should, as a matter of law, grant OPC's Motion for Summary Final Order.

8. In the alternative, if the Commission denies the Motion for Summary Final Order, the Commission should defer ruling on the matter until after service hearings are held in the affected service areas within the meaning and spirit of Rule 25-22.0406, Florida Administrative Code. This matter will result in a general increase in FPUC's customers rates over the next two years. While customer meetings were held in the affected areas, no service hearings with customer testimony have been scheduled for the affected areas. Nor has the fuel docket been noticed as a service hearing for the taking of customer testimony. Since the plan is allegedly being offered to offset future "rate shock" for the benefit of the customers, it is imperative that customers be allowed to offer

testimony in their affected service areas. Therefore, should the Commission take testimony on this issue at the fuel docket proceeding OPC requests that the Commission defer ruling on the issue until after service hearings are held in the affected service territories.

9. Counsel contacted FPUC's counsel who objects to the motion. Counsel contacted Staff Counsel who takes no position on the motion.

WHEREFORE, OPC requests the Commission grant OPC's Motion for Summary Final Order, or in the alternative, defer ruling until service hearings are held in the affected service territories.

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 Motion for Summary Final Order, or in the Alternative, Motion to Defer Ruling until Service Hearings Held has been furnished by electronic mail and U.S. Mail on this 1st day of November, 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