

ORIGINAL

Timolyn Henry

From: John W McWhirter [jmcwhirter@mac-law.com]
Sent: Friday, March 09, 2007 4:39 PM
To: Filings@psc.state.fl.us
Subject: RE: FIPUG Prehearing statement
Attachments: 0739 FIPUG prehearing statement.doc

Missing prehearing statement attached this time.

John McWhirter
10 Ladoga Ave
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From: Filings@psc.state.fl.us [mailto:Filings@PSC.STATE.FL.US]
Sent: Friday, March 09, 2007 3:51 PM
To: John W.McWhirter
Subject: RE: FIPUG Prehearing statement

Mr. McWhirter,

There was no attachment included with this e-filing. Please resend this e-mail with the attachment so that we can file it.

If you have any questions, do not hesitate to call Matilda Sanders or me at 850-413-6330.

Thank you.

Dorothy Menasco
FPSC
CCA - Records
850-413-6330
dmenasco@psc.state.fl.us

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SCR _____
SGA _____
SEC _____
OTH _____

From: John W.McWhirter [mailto:jmcwhirter@mac-law.com]
Sent: Friday, March 09, 2007 2:48 PM
To: Filings@psc.state.fl.us
Cc: Alex.Glenn; Bill McNulty; D Triplett; Earl Poucher; Harold Mclean; J Michael Walls; James W. Brew; Javier Portuando ; Jim Beasley; Joe McGlothlin; John Burnett; John McWhirter; Lisa Bennett; Mike Twomey; Patty Christensen, Esq.; Paul Lewis; Schef Wright
Subject: FIPUG Prehearing statement

- 1. John W. McWhirter, Jr., McWhirter Reeves & Davidson, P.A., 400 N. Tampa St. Tampa, FL 33602, jmcwhirter@mac-law.com is the person responsible for this electronic filing;

DOCUMENT NUMBER DATE

02176 MAR-9 5

3/9/2007

FPSC-COMMISSION CLERK

2. The filing is to be made in Docket 060658-EI, In re: Coal Price refund
3. The filing is made on behalf of the Florida Industrial Power Users Group;
4. The total number of pages is 3; and
5. The attached document is The Florida Industrial Power User Group's Prehearing Statement

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ORIGINAL

BEFORE THE PUBLIC SERVICE COMMISSION

In re: Petition on behalf of Citizens of the State of Florida to require Progress Energy Florida, Inc. to refund customers \$143 million.

DOCKET NO. 060658-EI

FILED: March 9, 2007

FIPUG'S PREHEARING STATEMENT

Pursuant to Order No. PSC-07-0048-PCO-EI, issued January 16, 2007 and Order No. PSC-07-0132-CPO-EI, issued February 15, 2007, establishing the prehearing procedure in this docket, the Staff of the Florida Industrial Power Users Group files its Prehearing statement.

A. APPEARANCES:

JOHN W. MCWHIRTER, JR., McWhirter, Reeves & Davidson, P.A., 400 North Tampa Street, Suite 2450, Tampa, Florida 33601-3350,

On Behalf of the Florida Industrial Power Users Group (FIPUG).

B. WITNESSES:

FIPUG endorses the testimony filed by OPC and the Commission Staff.

C. EXHIBITS:

None at this time. However, FIPUG reserves the right to utilize appropriate exhibits during cross-examination.

D. STATEMENT OF BASIC POSITION:

Progress Energy acted imprudently in its acquisition of coal between 1996 and 2005. The regulated utility has a duty to its customers to purchase and utilize fuel in a manner that is in the best interest of its retail customers. In keeping with this obligation it increased the construction cost and corresponding rate base for Crystal River Units 4 and 5 to burn a blend of bituminous coal and sub bituminous coal products to save fuel cost, but then failed to acquire less expensive coal when it became available to the detriment of retail customers.

Progress exacerbated the imprudence by abandoning its air permit authority to burn sub bituminous coal in 1996 and acquired coal from an affiliated non regulated company at prices higher than western coal that was available over subsequent years to the further detriment of its retail customers.

DOCUMENT NUMBER-DATE

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Independent evidence developed by the Commission staff confirms OPC's witnesses' findings that Progress paid above market prices for coal during the period from 1996 through 2005 that were 10 to 50% higher than the cost of coal acquired by other utilities located in the southeast.

E. STATEMENT OF ISSUES AND POSITIONS

LIST OF ISSUES

ISSUE 1: Did PEF act prudently in purchasing coal for Crystal River Units 4 and 5 beginning in 1996 and continuing to 2005?

POSITION: No.

ISSUE 2: If the Commission determines that PEF acted imprudently in its coal purchases, should PEF be required to refund customers for coal purchased to run Crystal River Units 4 and 5 during the time period of 1996 – 2005?

POSITION: Yes.

ISSUE 3: If the Commission determines that PEF should be required to refund customers for coal purchased to run Crystal River Units 4 and 5, what amount should be refunded?

POSITION: One hundred forty three million dollars (\$143,000,000.00) plus interest.

ISSUE 4: If the Commission determines that PEF should be required to refund customers for coal purchased to run Crystal River Units 4 and 5, how and when should such refund be accomplished?

POSITION: Reduce current fuel factor by an amount to fully recover the refund over twelve months.

F. STIPULATED ISSUES

None.

G. PENDING MOTIONS

None.

H. STATEMENT OF PENDING REQUESTS OR CLAIMS FOR CONFIDENTIALITY

None.

I. OBJECTIONS TO QUALIFICATIONS OF WITNESSES AS AN EXPERT

None.

J. STATEMENT OF COMPLIANCE WITH ORDERS ESTABLISHING PROCEDURE

FIPUG has complied with all procedural requirements..

**DOCKET NO. 060658-EI
CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that a true and correct copy of foregoing FIPUG Prehearing Statement has been furnished by electronic mail and U.S. Mail on this 9th day of March, 2007, to the following:

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