

Ruth Nettles

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Sent: Monday, August 25, 2008 3:26 PM
To: Filings@psc.state.fl.us
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Subject: FW: Dkt 080009-EI Brief brief
Attachments: 08825 Brief brief re issues.doc

Second try with attachment

From: John W. McWhirter [mailto:jmcwhirter@mac-law.com]
Sent: Monday, August 25, 2008 3:11 PM
To: filings@psc.state.fl.us
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Subject: Dkt 080009-EI Brief brief

1. John W. McWhirter, Jr., PO Box 3350 ,Fl 33601-3350, jmcwhirter@mac-law.com is the person responsible for this electronic filing;
2. The filing is to be made in Docket 080009-EI, In re: Nuclear Plant Cost Recovery
3. The filing is made on behalf of the Florida Industrial Power Users Group;
4. The total number of pages is 2; and
5. The attached document is The Florida Industrial Power User Group's Brief Brief on Potential Issue

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DOCUMENT NUMBER-DATE

07722 AUG 25 8

8/26/2008

FPSC-COMMISSION CLERK

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Nuclear cost recovery clause.

DOCKET NO. 080009-EI

FILED August 25, 2008

**THE FLORIDA INDUSTRIAL POWER USERS GROUP'S
BRIEF BRIEF IN SUPPORT OF ADDITIONAL ISSUE**

The Florida Industrial Power Users Group (FIPUG) through its undersigned attorney hereby files this Brief Brief.

Federal law requires investor owned utilities constructing nuclear plants to sell participation in the generating facility. On information and belief Florida Cities own from 10 to 12% of existing nuclear plants operated by both FPL and PEF.

The issue was raised in PEF's initial uprate dockets 070052-EI and 70698-EI, PEF stated that it would actively pursue such sales and report back. To the knowledge of the undersigned no such reports have been filed in the public domain.

The Florida press on several recent occasions has reported that FMPA is interested in acquiring an interest in the nuclear plants. It reports that Tampa Electric is interested in acquiring and interest and JEA is likewise interested.

A similar situation arose in DOCKET NO. 850050-EI, DOCKET NO. 850246-EI; ORDER NO. 15451. The Commission afforded customers rate increase protection, by giving them credit for off system sales. The Commission determined:

With the exception of certain specific disallowances that will follow, we find that all of the total project cost of BB4 was reasonably and prudently incurred and should be included in rate base. As will be more fully discussed in the NOI section of this order, we believe that TECO has done an excellent job of marketing that portion of BB4's capacity that is not presently needed to serve its current customers. We also believe that the mechanism we have established for treating future off-system sales of TECO's generating capacity will meet the laudable objectives of

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FPSC-COMMISSION CLERK

FIPUG's proposal while avoiding its inherent pitfalls.

...

As discussed at the beginning of this order, TECO has entered into a contract with FPL whereby the latter will purchase 70% of the capacity of BB4 from April 1, 1985 through December 31, 1985; 50% in 1986; and 25% in 1987. TECO has included the full revenue requirement of BB4 in its request for increased rates, but, pursuant to its proposed Big Bend Power Sales Credit Clause, has requested that we treat the contract revenues from FPL as a credit on its customer's bills, rather than include them in base revenues. For the reasons stated below, we have decided to disapprove the sales credit approach and, instead, include in base revenues the \$55,222,000 of BB4 sales to FPL projected for 1986."

In light of the extraordinary principles governing this case which portend large retail rate increases before the utility plant is in use and useful service, the Commission would do well to ameliorate the impact of these rates using the 1985 precedent by giving retail customers credit for probable sales to non retail customers.

Respectfully submitted,

/s/ John W. McWhirter,

Jr.

John W.

McWhirter, Jr.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing the Florida Industrial Power Users Group's Prehearing Statement has been furnished by e-mail the 25th day of August 2008, to the following:

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