

Marguerite McLean

From: John W. McWhirter [jmcwhirter@mac-law.com]
Sent: Wednesday, October 15, 2008 4:52 PM
To: Filings@psc.state.fl.us
Cc: Vicki Kaufman; Alex Glenn; Bill Feaster; Bill McNulty; Billy Stiles; Burnett, John ; Capt Damund E Williams; 'Cecilia Bradley'; Charles Beck; Cheryl Martin; Doc Horton; Earl Poucher; G. G. Living; 'Javier Portuando'; Jay Brew; 'Jeffrey Stone'; Jim Beasley; Joe McGlothlin; 'John Butler'; 'John Office McWhirter'; 'Jon Moyle'; 'JR Kelly'; Karin S. Torain; Keino Young; Kory Dubin; Lisa Bennett; McNeill Shayla; 'Mike Twomey'; Patty Christensen, Esq.; Paula K Brown; Pete Lester; Russell Badders, Esq.; 'Schef Wright'; 'Steve Burgess'; Susan D. Ritenour; Timothy Perry, Esq.; Wade Litchfield; White Lt Col Karen
Subject: FIPUG Brief
Attachments: 081015 FIPUG issue brief.doc

1. John W. McWhirter, Jr., PO Box 3350 ,FI 33601-3350, jmcwhirter@mac-law.com is the person responsible for this electronic filing;
2. The filing is to be made in Docket 080001-EI, In re: Fuel cost recovery. The filing is made on behalf of the Florida Industrial Power Users Group;
3. The total number of pages is 8; and
4. The attached document is The Florida Industrial Power User Group's Cross Brief on Fixed Cost Issue

John W. McWhirter, Jr.

PO Box 3350

Tampa, FI 33601-3350
 813 2240866
 813.505.8055 cell
 813.221.1854 FAX

DOCUMENT NO. DATE

09830-08 10.15.08
FPSC - COMMISSION CLERK

10/15/2008

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Fuel and purchased power
cost recovery clause and generating
performance incentive factor.

Docket No. 080001-EI
Filed: October 15, 2008

**FLORIDA INDUSTRIAL POWER USERS GROUP'S
BRIEF IN SUPPORT OF REQUIRING UTILITIES TO IDENTIFY NON VOLATILE
COSTS THEY HAVE INCLUDED IN THE FUEL CLAUSE**

The Florida Industrial Power Users Group (FIPUG) files this brief in response to Order No. PSC-08-0664-PCO-EI rendered October 7, 2008. This brief addresses whether the following issue is worthy of consideration by the Commission over the objection of the affected utilities.

FIPUG ISSUE: Does the fuel charge proposed by FPL/PEF/TECO contain items that do not change with the price of fuel, if so what is the amount included in the proposed fuel charge to cover these costs?

The extraordinary procedure for guaranteed fuel cost recovery began after the OPEC oil crisis in 1973 to relieve Florida investor owned utilities from having to file base rate cases to deal with volatile fuel costs. Twelve years later in 1985 the Commission specifically identified the costs that would be presumed sufficiently volatile for inclusion in the extraordinary proceeding. By Order 14546 in Docket 850001-EI the Commission approved a stipulation between the OPC and investor owned utilities. In doing so it stated the general policy that governs the fuel recovery docket.

“Prudently incurred fossil fuel-related expenses which are subject to volatile changes should be recovered through an electric utility's fuel adjustment clause.”
(emphasis. supplied)

The Commission attached to its order a list differentiating the types of costs that would be allocated to base rates and the type that could be collected through the fuel charge. That list is

attached to this brief for illustrative purposes. Since 1985 cost recovery has moved forward upon an ad hoc basis in response to periodic of utility requests. Once approved the costs submerge into the mire of fuel cost limbo. Today, twenty three years after the list was produced and thirty five years after the clause was initiated by the Commission without legislative direction, there are no clear differentiae of the cost elements included in the fuel clause as there was in 1985.

Cost recovery clauses have been a boon to regulated utilities. Cost recovery is guaranteed. If the utility is earning more than its authorized return on equity from base rates that fact is ignored. There is a great incentive to come up with new cost recovery clauses and to move base rate items to cost recovery clauses. After the fuel cost recovery charge was instituted the Commission has approved (sometimes with legislative authorization) conservation cost recovery, capacity cost recovery, environmental cost recovery, generation incentive reward/penalty cost recovery (within the fuel clause), security cost recovery (within the capacity clause), storm damage recovery, and hedging cost recovery (within the fuel clause), etc. Each year new and imaginative cost recovery items are presented.

This year it is nuclear plant cost recovery that will up customer bills by more than \$700 million. In the current cost recovery dockets the cost recovery amounts sought will account for more than 70% of four investor owned utilities' gross revenues for 2007 (the last calendar year reporting operating revenue). Progress Energy leads the pack. This year its \$3.9 billion in requested cost recovery items originally constituted 84.1% of its \$4.7 total operating revenues for 2007. Tampa Electric was not far behind at 78.4%.

Newly proffered rule 25-17.410(7)(a) recommends a Renewable Energy Cost Recovery clause (RECR) to come into play next year. It will cost customers \$372 million its first year of operation.

In its monthly PR piece enclosed with customers bills TECo announced its pending base rate case on top 2009 fuel cost recovery items it repeated a stock phrase generally proffered by regulated utilities.

“Tampa Electric does not mark up or profit from fuel costs, which are typically adjusted annually and are passed through from fuel suppliers.”

It failed to mention that all other cost recovery surcharges scheduled for increases in 2009 are composed primarily of capital costs upon which it does profit and salaries which have been transferred from base rates to cost recovery clauses to enhance the profitability of base rates.

The Conservation Cost Recovery and Environmental Cost Recovery clauses clearly identify the expenditures for fixed and variable expenses. The fuel and capacity cost recovery clauses do not. All cost recovery clauses are billed to customers under the general heading energy charge or fuel charge. The general public is kept in the dark about the cost elements customers are being required to fund. The Commission is likewise kept in the dark every year after a new cost recovery item has been approved for inclusion to the clause. The public is led to believe that the utilities receive no profit on any of these clauses. Commission auditors may be able to ferret out the distinctive charges, but the process lacks the transparency required for rational regulation because there is no clear demarcation of the fixed costs and the costs that are truly related to volatile fuel costs.

It has been 23 years since the Commission compiled a list of the appropriate volatile costs for inclusion in the fuel docket.

A potential conflict between fuel cost recovery and energy efficiency became apparent earlier this year when FPL and PEF requested mid year corrections. The FPL was base primarily upon a projection of lost sales. Paragraph 11 of its petition which said;

“11. The \$329,450,601 (5.4%) decrease in Jurisdictional Fuel Revenues is primarily due to lower than originally projected jurisdictional sales, which are now based on actuals through April 2008 and revised projections for May through December 2008. The current projection is for jurisdictional sales to be 5,697,643,867 kWh, 5.1% lower than the original projection (page 6, line B3). [cf without the inclusion of lost sales midcourse correction would not have been justified]

It footnoted this allegation by saying

“¹ Although FPL is projected to experience a reduction of approximately \$278 million in Jurisdictional Total Fuel Costs due to the lower fuel consumption that accompanies the projected reduction in MWh sales, this is more than offset by a projected increase of approximately \$549 million related to the much higher fuel cost per MWh.”

Logic would presume that if sales decrease the fuel cost to produce those sales would decrease correspondingly. Customers would benefit from energy conservation. Something else is at play. In the midcourse correction docket for FPL half the justification for the mid term change resulted from an anticipated sales decline. There must be fixed costs that don't go down or some other factor that comes into play when less fuel is burned. It is in the public interest to identify these costs or other factors as the Commission requires with other cost recovery clauses to insure that the original purpose of special treatment for volatile expenses is being followed.

Public policy and energy efficiency mandate that customers as a whole receive the benefit of conservation activities. In fact no conservation program is deemed cost effective unless the benefit to all customers is 1.2 times the cost of the program.

If variable costs go up when consumption goes down there is a great disconnect between the policy mandating fuel charge and the policy encouraging energy efficiency. It may not be the result of fixed costs in the clause. Perhaps a better issue for the prehearing order would be:

FIPUG Issue: ~~Does the fuel charge proposed by~~ Have FPL/PEF/TECO presented sufficient evidence to justify the fact that the fuel charge increased in 2008 when electricity consumption decreased contain items that do not change with the price of fuel, if so what is the amount included in the proposed fuel charge to cover these costs?

Irrespective of how the issue is stated the fact remains that there has been no review of the volatile items contained in the fuel charge other than volatile fuel for over 23 years. There is no differentiation of the charges in the fuel clause as there is for other cost recovery clauses.

FIPUG respectfully suggests that it is in the public interest to adequately monitor the guaranteed cost recovery clauses to insure that inappropriate items do not work their way into the clauses. The first step in establishing a policy is getting the facts. **The utilities suggest that this is a matter for discovery, but if there is no issue in the case such discovery would be irrelevant because it would not lead to admissible evidence as to any approved issue in the case.**

FIPUG's only purpose in raising this issue at this time is to enable parties to explore the facts to work toward a rational solution. The issue is ripe for review because one of the three largest utilities has filed a base rate case and two others have announced intention to do so. FIPUG does not wish to deprive utilities of the right to recover their prudent expenses nor the right to earn a fair return on their investments. Never the less the recovery should be in a proceeding that looks at the whole picture rather than using tunnel vision to examine the cost in a proceeding that places all the risk on customers.

Respectfully submitted

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing pleading was furnished to the following,

John T. Burnett / R. Alexander Glenn Progress Energy Service Company, LLC Office Box 14042 St. Petersburg, FL 33733-14042	Paula K. Brown Tampa Electric Company P. O. Box 111 Tampa, Florida 33601-0111
Paul Lewis, Jr. Progress Energy Florida, Inc. 106 East College Avenue, Suite 800 Tallahassee, FL 32301-7740	Lee L. Willis/James D Beasley. Ausley Law Firm Box 391 Tallahassee, FL 32301
J.R. Kelly, Florida Public Counsel c/o The Florida Legislature 111 W. Madison St., Room 812 Tallahassee, FL 32399-1400	R. Wade Litchfield & John T. Butler Florida Power & Light Company 700 Universe Boulevard Juno Beach FL 33408-0420
Jay W. Brew Brickfield, Burchette, Ritts & Stone, P.C. 1025 Thomas Jefferson St., NW Eighth Floor, West Tower Washington, DC 20007-5201	Beggs & Lane Law Firm J. Stone/R. Badders/ S. Griffin Post Office Box 12950 Pensacola, FL 32591
Mehrdad Khojasteh P.O. Box 3395 West Palm Beach, FL 33402-3395	Office of Public Counsel Patricia Christensen / Steve Burgess c/o The Florida Legislature 111 West Madison Street, #812 Tallahassee, FL 32399-1400
Michael Twomey Post Office Box 5256 Tallahassee, FL 32314-5256	Capt Shayla L McNeill, USAF Staff Attorney AFLOA/JACL-ULT 139 Barnes Drive Tyndall AFB, FL 32403-5317
Susan D. Ritenour Gulf Power Company One Energy Place Pensacola, FL 32520-0780	<i>/s/ John W. McWhirter, Jr.</i> John W. McWhirter, Jr PO Box 3350 Tampa, Fl 33601 813.505.8055

by electronic mail, on this 15th day of October, 2008:

APPENDIX A
 FUEL COST RECOVERY COMPARISON

Expense Item	TECO Recovery Method	FPL Recovery Method	FPC Recovery Method	GULF Recovery Method
01. Purchase Price of Fuel	FAC	FAC	FAC	FAC
02. Quality / Quantity Adj.	FAC	FAC	FAC	FAC
03. Retroactive Price Adj.	FAC	FAC	FAC	FAC
04. Transp. to Plant or Term.	FAC	FAC	FAC	FAC
05. Unloading Expenses	FAC-->BR	BR	BR	FAC-->BR
06. Labor (Rail Car Maint.)				FAC
07. Ad Valorem Taxes (Rail Car)				FAC
08. Rail Car Depreciation				FAC
09. Stores (Spare Parts)				FAC
10. Terminal Operating Expenses		FAC-->BR	FAC-->BR	
11. Transp. from Term. to Plant		FAC-->BR	FAC-->BR	
12. Handling Costs at Plant	BR	BR	BR	BR
13(a). Volume Insp's -- In-House		BR	BR	
13(b). Volume Insp's -- Outside		FAC	BR-->FAC	
14(a). Quality Insp's -- In-House	BR	BR	BR	BR
14(b). Qual. Insp's -- Outside	BR-->FAC	FAC	BR-->FAC	BR-->FAC
15. Limestone	FAC			
16. Limestone Freight	FAC			
17. Fuel Additives	FAC	FAC	FAC	FAC
18. Non-fuel Additives	FAC-->BR	BR	BR	
19. Detention / Demurrage	FAC	FAC		FAC
20. Inventory Adjustments	FAC	FAC	FAC	FAC
21. Wharfage / Dockage	FAC	FAC		FAC
22. Tug / Pilot Fees	FAC	FAC		FAC
23. Port Charges	FAC	FAC		FAC
24. EPA Charges	FAC			
25. Lost Coal	FAC			FAC
26. Fuel Administration	BR	BR	BR	BR
27. Outside Services	BR	BR	BR	BR
28. Admin. & General	BR	BR	BR	BR
29. Residuals	BR		BR	BR