ORIGINAL

LAW OFFICES
McWHIRTER, REEVES, McGLOTHLIN, DAVIDSON, RIEF & BAKAS, P.A.

100 NORTH TAMPA STREET, SUITE 2800
TAMPA, FLORIDA 33602-5126

MAILING ADDRESS: TAMPA
P.O. BOX 3350, TAMPA, FLORIDA 33601-3350

TELEPHONE (813) 224-0866
FAX (813) 221-1854
CABLE GRANDLAW

PLEASE REPLY TO
TALLAHASSEE

TALLAHASSEE OFFICE
117 S. GADSDEN
TALLAHASSEE, FLORIDA 32301

TELEPHONE (850) 222-2525
FAX (850) 222-5606

LYNWOOD F. ARNOLD, JR.
JOHN W. BAKAS, JR.
C. THOMAS DAVIDSON
STEPHEN O. DECKER
LINDA E. JORGE
VICKI GORDON KAUFMAN
JOSEPH A. McGLOTHLIN
JOHN W. McWHIRTER, JR.
RICHARD W. REEVES
FRANK J. RIEF, III
DAVID W. STEEN
PAUL A. STRASKE

March 31, 1998

HAND-DELIVERED

Blanca S. Bayo, Director
Division of Records and Reporting
Gunter Building
2540 Shumard Oak Boulevard
Tallahassee, Florida 32399-0870

Re: Docket No. 980269-PU

Dear Ms. Bayo:

Enclosed for filing and distribution are the original and fifteen copies of the Comments of the Florida Industrial Power Users Group in the above docket.

Please acknowledge receipt of the above on the extra copy enclosed herein and return it to me. Thank you for your assistance.

ACK ____
AFA 2
APP ____
CAF ____
CMU ____
CTR 1
EAG Debrule
LEG 1
LIN ____
OPC ____
RCH ____
SEC 1
WAS ____
OTH ____

Sincerely,

Vicki Gordon Kaufman

Vicki Gordon Kaufman

VGK/pw
Enclosures

ORIGINAL

BEFORE THE PUBLIC SERVICE COMMISSION

In re: Consideration of Change in Frequency and Timing of the Hearings for the Fuel and Purchased Power Cost Recovery Clause, the Generation Performance Incentive Factor, the Energy Conservation Cost Recovery Clause, the Purchased Gas Adjustment (PGA) True-Up, and the Environmental Cost Recovery Clause.	Docket No. 980269-PU Filed: March 31, 1998

COMMENTS OF THE
FLORIDA INDUSTRIAL POWER USERS GROUP

The Florida Industrial Power Users Group (FIPUG) pursuant to Staff's directions at the workshop held in this docket on March 17, 1998, files its comments.

Cost Recovery Comments

Before commenting on the Staff issues presented to deal with the proposed changes in Docket Nos. 980001-EI, 980002-EG, 980003-GU, and 980007-EI, FIPUG will make some observations as to problems with the current procedure from the viewpoint of a consumer organization.

The proposal as we understand it is to move from the current semi-annual hearings to an omnibus unified single annual hearing in which rates will be set to cover major operating costs of electric utilities and local gas distribution companies (LDCs). As contemplated, the new procedure would set rates for fuel purchases, conservation expenses, capacity purchases, gas purchases and environmental cost recovery up to 15 months before the costs are actually incurred. If implemented, the new procedure may also set a single cost recovery factor that will be in place for a year.

Hopefully the observations and comments that follow will prove helpful to the Florida Public Service Commission (Commission) and its Staff while they consider the modifications at issue here. The observations are not intended to be obstructionist or antagonistic, but rather to identify existing and potential concerns with the present cost recovery mechanisms to keep from exacerbating current problems.

The changes proposed in this docket are for the laudable purpose of simplifying "procedure." Unfortunately, substantive rights can be submerged in procedural simplification. FIPUG suggests that the parties should focus on consumer protection while considering the changes. Simplification should not result in regulatory avoidance. It should result in full disclosure of monopoly profit and provide consumer comfort that rates are just and reasonable. The *quid pro quo* for government protection for utilities is government protection for consumers.

1. <u>A lot of money is at stake.</u> On an annualized basis in the dockets under consideration, the Commission would set final rates in a one or two day hearing about 30 days after information is filed. The rates set will enable Florida's four major investor owned electric utilities (IOUs) to collect over $4 billion dollars from their customers. This is a monumental endeavor. To evaluate the scale of magnitude, compare the proposed procedure with the largest general rate case ever held for one of the utilities. That case, when FPL brought its last nuclear unit on line, resulted in a $238 million rate increase after six months of discovery and study, a detailed rate case audit, two weeks of hearings, extensive briefing and two months of Commission post-briefing deliberations.

FIPUG members pay about $75 million a year in electric costs through fuel adjustment surcharges. This is modest compared to the $3.9 billion paid by other consumers, but all are entitled to a process which closely scrutinizes these vast sums of money flowing to the utilities. The present system already provides less scrutiny than the public deserves. Annual proceedings would diminish it even further.

2. **Cost recovery proceedings guarantee revenue recovery.** The old saw that utilities are not guaranteed a return but only the opportunity to earn their authorized return no longer applies. Today approximately 40% of Florida utilities' revenues come from guaranteed cost recovery mechanisms that pay full costs plus interest if utilities underestimate the cost of their largest expenditures. While these costs are adjusted based on forecasts and true-up with interest after the fact, other costs which may be going down because of downsizing and depreciation are ignored in the absence of a general rate case. Returns on equity set high for utilities when the risks were greater are no longer appropriate if the cost of fuel and environmental protection are fully paid through cost recovery mechanisms.

The adjustment clauses are probably the reason that the Commission has not conducted a rate case in many years and why there is no rate case on the horizon. Because there have been no recent rate cases, there has not been scrutiny of utility costs to the level of detail found in rate cases. There is little scrutiny of such costs in the current clause mechanisms and there will be even less scrutiny under the proposed procedure.

3. **Cost recovery proceedings promote windfall profits.** Base rates are designed to cover prudent capital costs. Over time, the book value of existing plant falls as sales grow. When there is a modest inflation, base rates result in greater utility profit or provide the opportunity to expand plant without rate increases. For example, FPL was able to fund the acquisition of its joint interest in Georgia Power's Scherer plant and JEA's St. John's Power Park, its own Martin plant and engage in a fast write down of its nuclear plants to get ready for competition while it earned in excess of the Commission authorized rate of return approved in 1986 when FPL's last general rate case was held. At the same time, recovery clauses eliminate the detailed review of all costs that comes with rate cases.

Presently the capacity and environmental cost recovery mechanisms enable utilities to recover new purchased capacity and new environmental costs even though the utility may be earning more than its authorized return on its base rates. This year the four major IOUs will collect over $350 million through environmental and capacity cost recovery procedures without any consideration of whether base rates already in place might be sufficient to cover this cost.

4. **Cost recovery proceedings do not protect against the tied utility evil.** Section 79a of the *Public Utility Holding Company Act of 1935* itemizes the areas the Federal Trade Commission found to be violations of public trust by utility holding companies. One of the major areas of overreaching discovered by the FTC investigation and recited in the federal legislation was transactions between the utility and affiliated companies. The federal legislation was enacted because affiliated

companies sold utilities financial services, fuel, engineering and other services at noncompetitive prices far in excess of the value of the commodities and services received. The federal investigation resulted in this law which broke up utility holding companies and gave state regulators greater control over this potential problem.

Today Florida utilities exempt from the federal law have created holding companies. The holding companies' utility subsidiaries buy from affiliated holding company subsidiaries without competition. The costs of these transactions are collected, for the most part, through the cost recovery dockets without public disclosure of the prices paid sister companies for the items purchased. There is no apparent procedure in place to inform the public of the prices paid to tied companies. In the March 1998 fuel cost recovery docket, fuel prices approved for the purchase of coal by the four largest IOUs ranged from $15.60 per mwh for coal purchased in the competitive market place to $21.80 for the utility which buys primarily from its coal mining company and ships it by way of its shipping company. The current public filings do not disclose whether this 40% mark up has any relationship to the fact that the utility buys from its tied affiliates. Truncated annual hearings and confidentiality orders will provide less of an opportunity for interested consumers to discover if the price differentials are related to sweetheart trading.

5. **The GPIF rewards obsolete technology.** In the early 1980's, the Commission developed the Generating Performance Incentive Factor (GPIF) to reward utilities for the efficient operation of their generating plants. The *Public Utility Regulatory Policy Act* was enacted about the same time. Under the aegis of that Act,

independent power producers began to build power plants. In the last 15 years, the efficiency of power plants has improved dramatically. New combined cycle generators produce a kwh of electricity by burning only 6700 btus of fuel. The GPIF rewards regulated utilities by authorizing bonuses for utilities which burn 10,000 btus of fuel to create a single kwh of electricity. The utilities are presently allowed to earn millions of dollars in reward when they are burning 33% more fuel to create electricity than modern technology would provide.

At the same time that the GPIF "incents" utilities to perform efficiently, the utilities are protected from competition which would require them to be efficient in order to compete for and retain customers.

6. **Current cost recovery proceedings are a one-way street.** Utilities control most of the information concerning their fuel acquisition cost and are allowed to keep much of the information from public scrutiny by obtaining confidentiality orders from the Commission. If there is a forecast error that results in higher than expected fuel costs, they can get immediate relief through a true-up proceeding. Customers do not have the same opportunity to get relief from over collections because the facts are not readily available to them.

7. **Rates set using long range forecasts will violate Florida law.** Section 366.06, *Florida Statutes*, governs the way utility rates are set. It requires rates to be set based on "actual legitimate costs." The proposed procedure will require the utilities to forecast costs up to 15 months in advance. The Florida Supreme Court held that the Commission erred when it used an actual year-end rate base when

setting rates prospectively in the General Telephone case. *Citizens of Florida v. Hawkins*, 356 So.2d 254 (Fla. 1978). Year-end rate bases can only be used in times of extraordinary growth and inflation. It seems to FIPUG that setting rates to cover costs up to 15 months before the costs are actually incurred would be even more suspect in the eyes of the Court.

8. **The new procedure would deny consumers due process.** The Florida Constitution, the Administrative Procedure Act, the Florida Rules of Civil Procedure and the Commission's own rules require due process in the setting of utility rates. It is doubtful that utility filings made by 14 gas and electric utilities simultaneously seeking to collect over $4 billion set for hearing the month after filing provides sufficient time to study the filings much less discover material omitted information and prepare for hearing. A March 20th Staff study of proposed legislation to provide customer choice opined that two years would be insufficient time to develop proper rates for unbundled electric utility distribution systems, yet the proposal under consideration in this docket contemplates a larger undertaking in less than 60 days. A prominent analyst once observed that there are two ways to confuse decision makers. One - supply too little information. Two - supply too much information with too little time to study it. The proposed procedure will do both.

9. **There is no way to tell if capacity purchases are prudent.** There is no mechanism in place to evaluate the prudency of capacity surcharges. Except for PURPA purchases, where utilities are paid based on a Commission determination of avoided cost and utilities' competitively negotiated contracts, there is no way under

the present procedure and filing forms, for consumers to determine if the utility bought from a tied affiliated company when there was economy power available at lower prices. There is no explanation of why a regulated utility engaging in the competitive wholesale market may pay a wholesale municipal customer 3 times more for power it purchases from the municipal than it charges for power it sells to that utility. However, a public explanation would seem to be in order when retail customers pick up the full cost of purchased power, subsidize the power plants that generate the power, and pay more for fuel cost than charged the municipals at the same moment in time. There will be no time for discovery under the proposed procedure and information on incremental power costs has been kept confidential from customers who might challenge the sales they subsidize. While the current semi-annual procedure is expedited, it functions fairly well in practice. Typically problems identified in a filing are deferred six months enabling interested parties ample time to discover facts and fine tune the issues before the next semi-annual proceeding.

10. Independent fuel cost recovery proceedings may no longer be necessary. The proposed procedure indicates that fuel costs are not as volatile as they were when the forecasted collection procedure was implemented. Therefore, the best course may be to return them to base rates or recover such costs on a historic, not projected, basis.

11. A procedure that would allow inflexible fuel factors is discriminatory and discourages conservation. The *Florida Energy Efficiency and Conservation Act* (FEECA) directs the Commission to invoke conservation measures. All of the

conservation programs approved are based on cost incentives to customers. Section 366.06, Florida Statutes, directs that rates be nondiscriminatory and based on cost as one of the key elements. The cost of fuel burned to generate electricity changes hourly even for single fuel utilities and varies seasonally as more costly generators are placed in service to meet seasonal demand. If the new procedure permits a single average fuel cost factor to be utilized for a year at a time, like budget billing, it will fail to supply price signals that promote conservation and will discriminate against high load factor customers.

Comments On Specific Staff Issues

Staff Issue 1: Should the Commission approve a change in the frequency of the fuel and purchased power cost recovery hearings from a semiannual to an annual basis?

FIPUG: Inflation has moderated from the double digit rate that existed in 1979 during the second OPEC oil crisis. If fuel costs are no longer volatile requiring immediate reaction to price changes to protect the public interest, perhaps independent fuel, capacity and environmental cost proceedings are no longer necessary and the recovery of these expenses should be returned to base rates so that all utility costs can be considered simultaneously when rates are set. This procedure would resolve the problems recited in observations 1, 2, 3, 5, 6, 7, 8, 9 and 10 above and perhaps the

tied utility evil. It would also afford more due process and simplify procedure.

If independent fuel, capacity and environmental cost proceedings are maintained, historic costs should be used instead of forecasted costs. The GPIF should be eliminated and no interest should be charged. If the utilities improve their costs from the historic year, they should keep the money as long as they are under their authorized ROE. This provides an incentive to do better. If utilities do worse than the preceding year, they should not charge interest and should not be allowed recovery unless the utility earnings surveillance reports for the preceding twelve months show that the utility is earning less than the floor of its authorized return. The procedure should keep utilities whole, it should not allow utilities to recover all fuel costs plus excess profits on base charges. The procedure should consider the two revenue streams contemporaneously. Interim relief can be granted if the fuel market or weather changes dramatically.

If an annual procedure is adopted, monthly reports should continue and be expanded to fully disclose tied company transactions. Purchases from affiliated companies should be clearly set out for public scrutiny. The October filings should show 10 months actual and 2 months forecasted costs. Interim

fuel charges based on the filings should go into preliminary effect in January with hearings held in February. Expanded monthly reports with discovery open all year will provide due process. A final order approving the annual cost recovery should issue before the end of March making the necessary modifications in the factors that went into effect in January. This procedure will give more opportunity for discovery and case preparation.

Staff Issue 2: Should the Commission approve a change in the frequency of the environmental cost recovery hearings for Tampa Electric Company from a semiannual to an annual basis?

FIPUG: No position at this time. However, the Commission should recognize that this may become one of TECO's most significant costs in the future and probably deserves separate consideration.

Staff Issue 3: Should the Commission approve a change to calculate the factor for the fuel and purchased power cost recovery clause on a calendar year basis?

FIPUG: If annual proceedings are selected, the fuel factor should be calculated to recognize seasonal cost differentials or the factor should be calculated on a historic basis. This procedure will resolve observation 11. FIPUG strongly objects to a 12-month factor based on projections.

Staff Issue 4: Should the Commission approve a change to calculate the factor for the environmental cost recovery clause on a calendar year basis?

FIPUG: Yes. But, it should be based on an historic year. See comment on Issue 1.

Staff Issue 5: Should the Commission approve a change to calculate the factor for the energy conservation cost recovery clause on a calendar year basis?

FIPUG: Yes. But, it should be an historic year. See comment on Issue 1.

Staff Issue 6: Should the Commission approve a change to calculate the factor for the purchased gas adjustment (PGA) true-up on a calendar year basis?

FIPUG: No position at this time. However, the Commission should be aware that unbundled fuel costs for large customers protect them from excess charges for fuel and have driven the cost of fuel down for all consumers. Forms should require gas utilities to set out the capacity reservation allocations included in the PGA to ensure that electric/gas utilities are not stifling cogeneration competition by drying up pipeline capacity and to ensure that retail customers do not subsidize the gas utilities' ventures in the secondary capacity market. The capacity reservations maintained should comport with the LDCs' anticipated growth rate.

Issue 7: Should this docket be closed?

FIPUG: No. This docket gives an opportunity to explore the efficacy of cost recovery procedure in detail without the necessity of examining the substance of the material contained in the filings.

Vicki Gordon Kaufman

John W. McWhirter, Jr.
McWhirter, Reeves, McGlothlin,
Davidson, Rief & Bakas, P.A.
100 North Tampa Street, Suite 2800
Post Office Box 3350
Tampa, Florida 33601-3350
Telephone: (813) 224-0866

Joseph A. McGlothlin
Vicki Gordon Kaufman
McWhirter, Reeves, McGlothlin,
Davidson, Rief & Bakas, P.A.
117 South Gadsden Street
Tallahassee, Florida 32301
Telephone: (850) 222-2525

Attorneys for Florida Industrial
Power Users Group

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing **Comments of the Florida Industrial Power Users Group** has been provided by United States mail or hand-delivery* this **31st** day of **March, 1998**, to the following:

Leslie Paugh*
Florida Public Service Commission
Division of Legal Services
2540 Shumard Oak Boulevard
Gerald L. Gunter Building, Room 390Q
Tallahassee, Florida 32399-0850

Todd Bohrmann*
Florida Public Service Commission
Division of Electric & Gas
2540 Shumard Oak Boulevard
Gerald L. Gunter Building, Room 239G
Tallahassee, Florida 32399-0850

Matthew M. Childs
Steel Hector & Davis
First Florida Bank Building
Suite 601
215 South Monroe Street
Tallahassee, Florida 32301-1804

James A. McGee
Florida Power Corporation
Post Office Box 14042
St. Petersburg, Florida 33733

Jeffrey A. Stone
Beggs and Lane
Post Office Box 12950
Pensacola, Florida 32576

Gail Kamaras
Legal Environmental Assistance Foundation
1115 North Gadsden Street
Tallahassee, Florida 32303

John Roger Howe
Office of the Public Counsel
c/o The Florida Legislature
111 West Madison Street
Room 812
Tallahassee, Florida 32399-1400

James D. Beasley
Ausley & McMullen
Post Office Box 391
Tallahassee, Florida 32302

Kenneth A. Hoffman
Rutledge, Ecenia, Underwood, Purnell & Hoffman, P.A.
Post Office Box 551
Tallahassee, Florida 32302-0551

Michael A. Palecki
City Gas Company of Florida
955 East 25th Street
Hialeah, Florida 33013

Vicki Gordon Kaufman