

MCWHIRTER REEVES
ATTORNEYS AT LAW

TAMPA OFFICE:
400 NORTH TAMPA STREET, SUITE 2450
TAMPA, FLORIDA 33602
P. O. BOX 3350 TAMPA, FL 33601-3350
(813) 224-0866 (813) 221-1854 FAX

PLEASE REPLY TO:
TALLAHASSEE

TALLAHASSEE OFFICE:
117 SOUTH GADSDEN
TALLAHASSEE, FLORIDA 32301
(850) 222-2525
(850) 222-5606 FAX

September 28, 1999

ORIGINAL

Blanca S. Bayo, Director
Division of Records and Reporting
Betty Easley Conference Center
4075 Esplanade Way
Tallahassee, Florida 32399-0870

RECEIVED-FPSC
99 SEP 28 PM 2:11
RECORDS AND
REPORTING

Re: Docket Number 981890-EU

Dear Ms. Bayo:

On behalf of Florida Industrial Power Users Group, enclosed for filing and distribution are the original and 15 copies of the following:

- ▶ Motion to Compel Florida Power Corporation to Respond to Discovery

Please acknowledge receipt of the above on the extra copy of each and return the stamped copies to me in the envelope provided. Thank you for your assistance.

Yours truly,

Vicki Gordon Kaufman

Vicki Gordon Kaufman

AFA 2
APP _____
CAF _____
CMU VGK/jk
CTR _____
EAG eng
LEG _____
MAS 5
OPC _____
PAI 2
SEC _____
WAW _____
OTH _____

RECEIVED & FILED

Wes
FPSC-BUREAU OF RECORDS

DOCUMENT NUMBER - DATE
11701 SEP 28 99
FPSC-RECORDS/REPORTING

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Generic investigation into the
aggregate electric utility reserve margins
planned for Peninsular Florida

Docket No. 981890-EU

Filed: September 28, 1999

**The Florida Industrial Power Users Group's Motion to Compel
Florida Power Corporation to Respond to Discovery**

The Florida Industrial Power Users Group (FIPUG), pursuant to rule 28-106.206, Florida Administrative Code, files this motion to compel Florida Power Corporation (FPC) to respond to the discovery requests propounded by FIPUG. As grounds therefor, FIPUG states:

1. This is the fourth in a series of Motions to Compel which FIPUG has been forced to file (thus needlessly wasting FIPUG time and resources) in regard to totally unfounded objections to discovery in this docket. FIPUG requests that the Commission take prompt action on this motion and in doing so make it absolutely clear to the utilities that these type of delaying tactics will not be tolerated.

1. On September 8, 1999, FIPUG served sixteen (16) interrogatories and six (6) requests for production on FPC.

2. On September 23, 1999, FPC objected to *all* of FIPUG's discovery. As a preliminary matter, it should be noted that these objections are out of time. Order No. PSC-99-0760-PCO-EU requires discovery objections to be made within ten days of service of the discovery, thus making any objections due on September 18. FPC has missed that deadline by almost a week. Further, FPC did not answer *one* question. Instead, FPC makes frivolous objections in an attempt to avoid fulfilling its discovery obligations. The Commission should immediately order FPC to respond to FIPUG's discovery requests.

FPC's Objection as to the Nature of the Proceeding

3. Just like the objections made by the Florida Reliability Coordinating Council (FRCC) and Florida Power and Light Company (FPL) and Tampa Electric Company (TECo), as to *every single question*, FPC objects on the grounds that discovery in this docket is not appropriate. This Commission has addressed the nature of this proceeding numerous times and has taken a view contrary to that which FPC continues to espouse.

4. FPC simply repeats once more the arguments that have already been rejected several times by this Commission. Earlier in this proceeding, several utilities challenged the nature of this docket and complained that an investigation should not be conducted as a formal proceeding. Oral argument was held and the utilities' arguments were rejected:

. . . I find that the Rule [28-106.101(2), exempting investigations from formal evidentiary proceedings] does not supersede our statutory jurisdiction and responsibility to assure the provision of adequate electricity at a reasonable cost. Sections 366.05(1), 366.04(5), 366.05(7) and 366.05(8), *Florida Statutes*, invest the Commission with jurisdiction over the planning, development and maintenance of a coordinated electric power grid to assure an adequate and reliable source of energy for the state. In the exercise of its jurisdiction, the Commission has the power to, among other things, require repairs, improvements, additions, and extensions to the plant and equipment of any public utility when reasonably necessary to promote the public welfare and secure adequate service of facilities. In addition, Rule 25-22.036(3), *Florida Administrative Code*, provides for the Commission to initiate proceedings on its own motion in the execution of its statutory duties. The purpose of this proceeding is to afford the Commission a full record with sufficient information upon which to make a decision regarding the adequacy of the reserve margins planned for Peninsular Florida. The position advanced by the utilities and the Florida Reliability Coordinating Counsel would hinder the Public Service Commission's ability to make a well-reasoned decision. *As such, this docket shall proceed as a formal evidentiary hearing investigating the electric utility reserve margins.*

. . . The current procedure established for this docket affords these [120.57(1)(b)] rights to all persons whose substantial interests may be affected by the decisions to

be made in this proceeding.¹

5. Reconsideration of this order was sought before the full Commission and denied.²

The Commission reiterated the clear position set forth in its original Order:

The Order [Order No. PSC-99-1274-PCO-EU] unequivocally states that Rule 28-106.101(2), *Florida Administrative Code*, does not supercede the Commission's statutory jurisdiction to proceed with an investigation as a formal evidentiary proceeding. The Order also holds that Rule 25-22.036(3), *Florida Administrative Code*, controls the initiation of this proceeding. . . .

. . . [T]he companies have failed to demonstrate that the Order is based on any mistake of law or fact. The companies' analyses of the Commission's investigatory jurisdiction and their interpretation of the decision of the Administrative Commission is wrong. It cannot seriously be disputed that the Commission may proceed with this investigation as a formal evidentiary proceeding. Section 350.123, Florida Statutes, grants the Commission plenary procedural jurisdiction to effectuate its statutory obligations.³

6. The utilities argued that "discovery could not be permitted, there could be no parties or intervenors, witnesses could not be called to testify and no action or final order could be rendered following the proceeding. . . ." ⁴ The Commission directly rejected this claim: "The companies' position is in direct conflict with the Commission's manifest authority under Chapters 350 and 366, *Florida Statutes*."⁵ The Commission has twice addressed⁶ the claim TECo makes in its discovery

¹ Order No. PSC-99-1274-PCO-EU at 2, emphasis added..

²Order No. PSC-99-1716-PCO-EU.

³Order No. PSC-99-1716-PCO-EU at 3-4.

⁴Order No. PSC-99-1716-PCO-EU at 4.

⁵*Id.*

⁶ See also, Order No. PSC-99-1884-PCO-EU at 1, where the Commission *again* reiterated the nature of this proceeding: "During the conference, several of the parties raised issues challenging the nature of this docket as a formal evidentiary proceeding. By Order No.

objections; such objections should be summarily denied.⁷

7. The Order Establishing Procedure⁸ governs the conduct of discovery of this case. FIPUG, as a party granted Intervenor status⁹, is entitled to propound discovery. Arguments which have been made and rejected by the Commission provide no basis for FPC's refusal to respond to FIPUG's discovery requests.

FPC's Other Objections

8. FPC objects to FIPUG Interrogatory No. 1 which relates to protocols for the exercise of curtailments or buy throughs as irrelevant to a reserve margin investigation. FPC objects to producing such protocols in its objection to Production Request No. 1¹⁰ and it objects to providing dispatcher's operating orders asked for in Production Request No. 2. It objects to Production Request No. 3 which asks for reports, logs... relating to the periods proceeding curtailments and to Production Request No. 4 seeking logs... for any non-firm load FPC intends to exclude from its reserve margin calculation.. All of these requests are relevant to the way in which FPC uses its ability to curtail and buy through to manage the demand on its system. Such information is directly relevant to whether or not appropriate reserve margin calculations are being made.

PSC-99-1274-PCO-EU, issued July 1, 1999, the Prehearing Officer ordered that the docket proceed as a formal evidentiary proceeding." (footnote omitted).

⁷Despite the Commission's clear orders on the nature of this proceeding, the utilities refuse to relent. Motions to bifurcate the proceeding have been filed by TECo and FPC.

⁸Order No. PSC-99-0760-PCO-EU.

⁹Order No. PSC-99-0838-PCO-EU.

¹⁰FPC's objections to FIPUG's production requests are somewhat confusing; it has some "general" objections which appear to relate to specific requests and then it has some "specific" objections which also appear to relate to specific requests.

9. Interrogatory Nos. 2 and 3 ask how much load management and how much interruptible power, respectively, has been on FPC's system in the past five years. Similarly, Interrogatory No. 4 asks for information on FPC's curtailable rate programs. FPC objects and argues that these questions are irrelevant. Interrogatory No. 5 asks FPC to provide the options available to satisfy firm load assuming curtailable customers return to firm service. Again, FPC says this is irrelevant. All FPC need do is refer to the issues in this proceeding to ascertain the relevance of these questions. For example, Issue No. 6 asks should there be a limit on the ration of non-firm load to MW reserves. Issue No. 17 asks what reserve margin is currently planned and is it sufficient. These and other issues are tied, in part, to the amount of curtailable load on a utility's system and how that curtailable load factors into the reserve margin calculation.

10. FPC objects to FIPUG Interrogatory No. 6, which asks for a reserve margin calculation assuming that certain groups of customers switch to firm service, as irrelevant and speculative. Again, the effect which certain types of rate schedules have on the calculation of reserve margin is an important issue in this docket. For example, if load management customers can switch back to firm service on 7 days notice, how is that accounted for in calculating the necessary reserve margin? Without the requested information, the answer to this and other important questions will not be known

11. FPC objects to Interrogatory No. 7, which asks for the hours of curtailment in the last five years, No. 8, asking for buy-through information, and No. 10, asking the number of times FPC has asked large customers to curtail, as burdensome. FPC also alleges that FIPUG is improperly seeking information about how FPC treats non-firm customers. As discussed above, an understanding of how the various types of rate schedules factor into reserve margin calculations is

critical to the process in which the Commission is engaged. This is not a quest by FIPUG to gain information to which it is not entitled; the information sought is directly relevant to the issues in this docket.

12. FIPUG Interrogatory No. 9 asks how Florida is impacted by power shortages. FPC says this question is vague and ambiguous. It is not; it simply seeks to know how shortages in other states, upon which Florida utilities may rely, impact Florida's reserve

13. FIPUG Interrogatory No. 11 asks how reserve margin differs from capacity margin. FIPUG Interrogatory No. 12 asks what are the advantages of using a reserve margin calculation over a capacity margin calculation. Incredibly, FPC objects to these questions as irrelevant. Of course, how reserve margin or capacity margin is calculated in Florida (and in other jurisdictions) is relevant to this docket. See Issue No. 13.

13. FPC objects to Interrogatory No. 13 which attempts to explore why FPC demand exceeds capacity. FPC objects to providing any information about this topic arguing that the interrogatory is overbroad, burdensome and irrelevant. FPC makes the same objection as to Production Request No. 6. FPC begs the question in its objection to both questions when it states: "FPC (individually) and FRCC (aggregately) both properly account for all FPC's firm power purchases as a part of its total firm capacity in calculating seasonal reserve margins." But isn't that one of the very issues in this docket? If statements by FPC were all that was necessary in this docket, there would be no need to even hold a hearing.

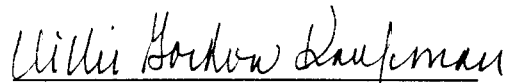
14. Interrogatory Nos. 14 and 15 inquire about FPC's wholesale sales. FPC says such inquiries are irrelevant; however, the interplay between wholesale commitments and the ability to serve retail customers must be understood in determining issues related to reserve margin.

15. FPC objects to FIPUG's question about the power futures market in Interrogatory No. 16. But questions about FPC's participation in this market are germane to this docket.

16. FPC objects to providing copies of complaints from load management customers, which FIPUG requests in Production Request No. 5. FPC says this request is burdensome but provides no information as to why the request is burdensome. Such documents are relevant to this proceeding and should be produced.

17. In sum, FPC's objections are nothing more than an attempt to further delay this proceeding and to withhold relevant information from a party attempting to prepare for hearing. The Commission should summarily deny these objections and warn FPC (as well as the other utility parties) that such delaying tactics will not be tolerated.

WHEREFORE, FIPUG requests that the Commission enter an order requiring FPC to promptly respond to FIPUG's discovery requests.



John W. McWhirter, Jr.
McWhirter Reeves McGlothlin Davidson
Decker Kaufman Arnold & Steen, P.A.
400 North Tampa Street, Suite 2450
Tampa, Florida 33601-3350

Vicki Gordon Kaufman
McWhirter Reeves McGlothlin Davidson
Decker Kaufman Arnold & Steen, P.A.
117 South Gadsden Street
Tallahassee, Florida 32301

Attorneys for the Florida Industrial Power Users
Group

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true copy of the Florida Industrial Power Users Group's Motion to Compel Florida Power Corporation to Respond to Discovery has been furnished by U.S. mail and or hand-delivery (*) on this 28th day of September, 1999 to the following:

(*)Robert V. Elias
Division of Legal Services
Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, FL 32399-0850

Robert Scheffel Wright
Landers & Parsons, P.A.
310 West College Avenue
Post Office Box 271
Tallahassee, FL 32302

Paul Sexton
Thornton J. Williams
Thornton Williams & Associates
Post Office Box 10109
Tallahassee, FL 32302

Charles Guyton
Steel Hector & Davis
215 South Monroe Street, Suite 601
Tallahassee, FL 32301-1804

Jeffrey A. Stone
Beggs & Lane
Post Office Box 12950
Pensacola, FL 32756-2950

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

Michelle Hershel
Florida Electric Cooperative Assoc.
Post Office Box 590
Tallahassee, FL 32302

Thomas J. Maida
Foley & Lardner
30 East Park Avenue
Tallahassee, FL 32301

Ken Wiley
Florida Reliability Coordinating Council
405 Reo Street, Suite 100
Tampa, FL 33609

John Roger Howe
Office of Public Counsel
111 West Madison Street, Room 812
Tallahassee, FL 32399

Richard A. Zambo
598 SW Hidden River Avenue
Palm City, FL 34990

Jon Moyle
Moyle, Flannigan, Katz, Kolins, Et Al
The Perkins House
118 North Gadsden Street
Tallahassee, FL 32301

Tracy E. Danese
Jacksonville Electric Authority
21 West Church Street, T-16
Jacksonville, FL 32202

Frederick M. Bryant
Florida Municipal Power Agency
2010 Delta Boulevard
Tallahassee, FL 32315

James Swartz
City of Homestead
675 North Flagler Street
Homestead, FL 33030

Gary Lawrence
City of Lakeland
501 East Lemon Street
Lakeland, FL 33801

Rex Taylor
City of Vero Beach
Post Office Box 1389
Vero Beach, FL 32961

Ben Sharma
Kissimmee Utility Authority
P.O. Box 423219
Kissimmee, FL 34742

Harvey Wildschuetz
City of Lake Worth Utilities
1900 Second Avenue North
Lake Worth, FL 33461

Charles A. Russell
Florida Keys Electric Cooperative
Post Office box 377
Tavernier, FL 33070

Roy C. Young
Young, van Assenderp et al
225 South Adams Street, #200
Tallahassee, FL 32301

Lee L. Willis
James D. Beasley
Ausley & McMullen
Post Office Box 391
Tallahassee, FL 32302

Gary Sasso,
Carlton Fields
Post Office Box 2861
St. Petersburg, FL 33731

J. Paul Wetzel
City of St. Cloud
1300 Ninth Street
St. Cloud, FL 34769

Thomas W. Richards
Fort Pierce Utilities
Post Office Box 3191
Ft. Pierce, FL 34948

Dean Shaw
City of Ocala
Post Office Box 1270
Ocala, FL 34478

Timothy Woodbury
Seminole Electric Cooperative
Post Office Box 272000
Tampa, FL 33688

Richard G. Feldman
City of Tallahassee
300 South Adams Street
Tallahassee, FL 32301

T. B. Tart
Orlando Utilities Commission
Post Office Box 3193
Orlando, FL 32802

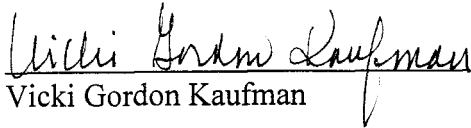
Larry J. Thompson
Utility Board of the City of Key West
Post Office Drawer 6100
Key West, FL 33041

Florida Public Utilities Co.
Mr. Jack English
401 South Dixie Highway
West Palm Beach, FL 32402

Myron Rollins
Black & Veatch
P.O. Box 8405
Kansas City, MO 64114

Raymond O. Manasco, Jr.
Gainesville Regional Utilities
Post Office Box 147117
Station A-138
Gainesville, FL 32614

Gail Kamaras
Debra Swim
Legal Environmental Assistance
Foundation, Inc.
1114 Thomasville Road, Suite E
Tallahassee, FL 32303


Vicki Gordon Kaufman