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BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

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In re: Fuel and Purchased Power  
Cost Recovery Clause with Generating  
Performance Incentive Factor.

Docket No. 040001-EI  
Filed: October 4, 2004

COMMISSION  
CLERK

**JOINT MOTION OF THE CITIZENS OF THE STATE OF FLORIDA AND THE  
FLORIDA INDUSTRIAL POWER USERS GROUP TO  
REMOVE ISSUES RELATED TO PROPOSED UNIT POWER SALES AGREEMENTS  
FROM THE FUEL ADJUSTMENT DOCKET**

The Citizens of the State of Florida (Public Counsel) and the Florida Industrial Power Users Group (FIPUG) (collectively, Joint Movants), pursuant to rule 28-106.204, Florida Administrative Code, file this motion to remove issues related to the proposed Unit Power Sales (UPS) agreements between Florida Power and Light Company (FPL) and Southern Company (Southern) and Progress Energy Florida, Inc. (Progress Energy) and Southern from consideration in this docket to a separate docket, so that parties and the Commission will have adequate time within which to analyze them thoroughly. As grounds therefore, Joint Movants state:

1. On September 9, 2004, FPL and Progress Energy filed testimony and exhibits related to the proposed UPS agreements for which they seek approval in this docket. FPL's testimony requests the approval of three different proposed UPS contracts, from three separate power generation facilities, with two different fuel types, and two different counter parties. The

CMP \_\_\_\_\_ contracts themselves comprise an exhibit of more than 300 pages, roughly the size of a telephone  
COM 5 \_\_\_\_\_  
CTR \_\_\_\_\_ book. Progress Energy requests approval of two different UPS arrangements that Progress  
ECR \_\_\_\_\_ Energy is negotiating, with two different power generation facilities, two different fuel types, and  
GCL \_\_\_\_\_ two different counter parties. Collectively, the proposed UPS agreements comprise some 1380  
OPC \_\_\_\_\_  
MMS \_\_\_\_\_ megawatts of capacity. These are lengthy and complex agreements, representing a significant

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commitment of capacity and energy, which necessitate discovery and thorough analysis that simply cannot be done in the time frame of the fuel adjustment docket.

2. The UPS PPAs are not scheduled to take effect until 2010, yet the utilities request that the Commission rush to decide these issues at this year's fuel proceeding set to begin November 8<sup>th</sup>.<sup>1</sup> The September 9, 2004 testimony and exhibits of FPL and Progress Energy give rise to complex issues relating to the particulars of the proposed agreements, the benefits claimed for them, and the adequacy of the efforts the utilities exerted to ensure that they obtained the most economical sources for their ratepayers.

3. It is impossible for Joint Movants to conduct the necessary discovery so as to fully understand and analyze the issues within the time frame of the schedule in Docket 040001-EI. The procedural order in this docket requires that utilities respond to discovery within 20 days of service if the request relates to matters raised in the utility's projection testimony.<sup>2</sup> Thus, if Joint Movants had analyzed the testimony and formulated comprehensive discovery so as to have served it the very day after the testimony was filed (September 10<sup>th</sup>), and if all the answers had been complete with no objections lodged, Joint Movants would have received such responses on September 30<sup>th</sup> - one business day before Intervenor testimony is due. The compressed time frame does not allow Joint Movants sufficient time to conduct meaningful analysis, retain and consult with experts, or conduct even one full round of discovery. It certainly provides no time for follow-up discovery or depositions before the Intervenor testimony due date. In sum, the time allowed to conduct discovery in this docket is insufficient to

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<sup>1</sup> These contracts are not even appropriate for inclusion in this proceeding. The purpose of this proceeding is to set fuel factors for 2005. The 2005 factor is in no way implicated by the utilities' request for approval of the UPS PPAs set to take effect in 2010.

<sup>2</sup> Order No. PSC-04-0160-POC-EI at 1 (February 17, 2004).

propound, receive and evaluate meaningful discovery, let alone prepare testimony based on discovery responses.

4. Further, FPL and Progress Energy have demonstrated no need that would require the Commission to indulge their rush to judgment. The utilities' request for a speedy approval of the proposed UPS arrangements must be weighed against the potential harm to ratepayers that would result from approval without adequate review of the myriad of complex issues that must be evaluated.

5. Progress Energy's witness says that Progress Energy has not negotiated a definitive agreement. It will not be available prior to the deadline for Intervenors' testimony in Docket No. 040001-EI.

6. In last year's fuel adjustment, the Commission recognized and discussed the truncated nature of the fuel adjustment. Chairman Jaber stated:

It seems to me that this administrative process has had its benefits in terms of efficiencies, but some of these issues aren't as routine as they've been in the past. So if we could find a way to keep the issues that are routine in this very expedited process, great, but I don't like the feeling of being rushed, not having a lot of evidence, second guessing.<sup>3</sup>

Commissioner Deason added:

Let me say that I agree with what you're saying. And it's difficult on the parties, it's difficult on the staff, it's difficult on the Commissioners to have these very intense, meaningful debates with evidence and cross-examination on these significant policy issues within the confines of this once a year November hearing where we're trying to get fuel factors finalized to be effective January.

And I would just ask Public Counsel, FIPUG, all of the participants, if there's a better way of doing it, let's think about it. Maybe the way we're doing it is best, but it just seems to me that when we start talking about these very

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<sup>3</sup> Hearing Transcript, Docket No. 030001-EI at 1277.

significant policy issues, it would be better to have a little bit more -- the luxury of having a little bit more time as opposed to being pressed against this deadline and having to make bench decisions.

I'm not critical of what we've just done. Just like the Chair, I think these issues have been very thoroughly litigated, that the parties did a superb job in presenting their cases, but we did it in a very compressed time frame, and we did not have the luxury of having briefs filed if we thought that would be helpful. We didn't have the luxury of staff analyzing all of that and coming forward with a written recommendation. While I applaud staff for your oral recommendation, I just think that some of these issues would be better addressed in a more traditional atmosphere, if possible.<sup>4</sup>

7. The same reasoning is applicable to the proposed UPS contracts. These are large, long term, multi-million dollar contracts. The ratepayers and the Commission must have adequate time to assure themselves that the appropriate analysis has been performed, that all other alternatives have been considered and evaluated, and that the price which will be recovered from ratepayers is just and reasonable. This cannot be accomplished in the 16 working days between September 9<sup>th</sup> and October 4<sup>th</sup>.

8. Section 366.06(3), *Florida Statutes*, gives the Commission and interested parties eight months within which to evaluate a rate increase related to a new power plant to be placed in utility rate base after the plant is in used and useful service. For these types of rate increases, the magnitude of the increase is known and extensive minimum filing requirements (giving all of the essential details) have been met before the case is processed. In the present case, the utilities are seeking a rate increase of unknown dimensions under proposed contracts that would begin six years in the future in less than half of the time based on cursory information that is in large part deemed confidential. The difficulty is compounded because contemporaneously the two utilities

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<sup>4</sup> *Id.* at 1277-78.

are seeking approximately a **\$1 Billion increase** to projected fuel, conservation, environmental and capacity costs, in addition to their request for generating performance rewards. Due process will be swept away in the detritus of the whirlwind.

9. The timing of the proposed UPS agreements, and all activities connected with them, are solely in the utilities' control. It would be patently unreasonable to force Joint Movants to attempt to evaluate these contracts on such a compressed schedule.

**WHEREFORE**, Joint Movants request that the Commission enter an order removing issues related to the proposed UPS purchase power agreements for which FPL and Progress Energy seek approval from the fuel adjustment docket for consideration in a separate docket.

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## CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing Joint Motion to Remove Issues Related to Proposed Unit Power Agreements from the Fuel Adjustment Docket has been furnished by (\*)hand delivery, and U.S. Mail this 4<sup>th</sup> day of October, 2004, to the following:

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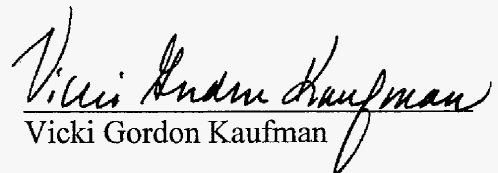
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