

ORIGINAL

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 18, 2004

COMMISSION
CLERK

**POWER SYSTEMS MFG., LLC AND TOM CHURBUCK'S
PREHEARING STATEMENT OF ISSUES AND POSITIONS**

Power Systems Mfg., LLC (Power Systems) and Tom Churbuck (Churbuck), collectively referred to as PS/Churbuck, pursuant to Order No. PSC-04-0161-PCO-EI, file their Prehearing Statement of Issues and Positions.

A. APPEARANCES:

JON C. MOYLE, JR. and BILL HOLLIMON, Moyle, Flanigan, Katz, Raymond and Sheehan, P.A., The Perkins House, 118 North Gadsden Street, Tallahassee, Florida, 32301.

JOE REGNERY, ESQ., Island Center, 2701 North Rocky Point Drive, Suite 1200, Tampa, Florida 33607

On Behalf of the Power Systems Mfg., LLC and Tom Churbuck

B. WITNESSES:

<u>Witness</u>	<u>Proffered by</u>	<u>Issues</u>
David E. Dismukes	Power Systems Mfg, LLC, Thomas K. Churbuck and FIPUG)	14A-14C
William N. McKenzie (adverse witness)	Power Systems Mfg., LLC Tom Churbuck	14A-14C
Terry Morrison (adverse witness)	Power Systems Mfg., LLC Tom Churbuck	14A-14C
All witnesses listed by other parties		

- CMP _____
- COM 5
- CTR _____
- ECR _____
- GCL _____
- OPC _____
- MMS _____
- RCA _____
- SCR _____
- SEC 1
- OTH _____

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C. EXHIBITS:

<u>Exhibit</u>	<u>Witness</u>	<u>Description</u>
Attachment 1	David E. Dismukes	C.V. of David E. Dismukes
Exhibit No. __ (DED-1)	David E. Dismukes	Contribution of Contracts to Total Purchase Agreement
Exhibit No. __ (DED-2)	David E. Dismukes	Merchant Facilities Located in Proximity to Contracted Units
Exhibit No. __ (DED-3)	David E. Dismukes	Estimated Natural Gas Transmission Capacity
Exhibit No. __ (DED-4)	David E. Dismukes	Merchant Development in SERC Region
Exhibit No. __ (DED-5)	David E. Dismukes	Merchant Development in SERC by Subregion
Exhibit No. __ (DED-6)	David E. Dismukes	Merchant Development in FRCC Region
Exhibit No. __ (DED-7)	David E. Dismukes	Merchant Facilities Under Construction in SERC
Exhibit No. __ (DED-8)	David E. Dismukes	Merchant Facilities Under Development in SERC
Exhibit No. __ (DED-9)	David E. Dismukes	Merchant Alternatives in SERC
Exhibit No. __ (DED-10)	David E. Dismukes	Planned Transmission Additions (Circuit Miles)

All documents obtained during discovery

D. STATEMENT OF BASIC POSITION:

FPL seeks Commission approval of agreements with Southern Company Service, Inc. (SCSI), a subsidiary of the Southern Company totaling approximately 955 megawatts. FPL seeks approval of these arrangements six years before the power is needed. FPL asks the Commission to “pre-approve” these contracts without FPL first either soliciting or thoroughly evaluating alternative proposals to ensure that these contracts represent the best option to meet the future needs of FPL consumers, including Churbuck and Power Systems, at the lowest

possible cost. Churbuck and Power Systems allege that the contracts for which FPL seeks approval include costs that are unreasonable and not ripe for approval at this time. Additionally, Churbuck and Power Systems question whether the Commission can find the pricing of the contracts is fair, reasonable and not excessive when SCSi and its corporate affiliates failed, by their own submission, one of the indicative tests used by the Federal Energy Regulatory Commission (“FERC”) for determining market power. Churbuck and Power Systems suggest that FPL’s requested approval of these contracts, and all attendant issues, be placed into a separate docket to enable the parties, staff and the Commission adequate time and opportunity to consider FPL’s request for approval of these contracts.

E. STATEMENT OF ISSUES AND POSITIONS:

GENERIC FUEL ADJUSTMENT ISSUES

ISSUE 1: What are the appropriate fuel adjustment true-up amounts for the period January 2003 through December 2003?

PS/CHURBUCK: No position at this time.

ISSUE 2: What are the appropriate fuel adjustment true-up amounts for the period January 2004 through December 2004?

PS/CHURBUCK: No position at this time.

ISSUE 3: What are the appropriate total fuel adjustment true-up amounts to be collected/refunded from January 2005 to December 2005?

PS/CHURBUCK: No position at this time.

ISSUE 4: What is the appropriate revenue tax factor to be applied in calculating each investor-owned electric utility’s levelized fuel factor for the projection period January 2005 through December 2005?

PS/CHURBUCK: No position at this time.

ISSUE 5: What are the appropriate projected net fuel and purchased power cost recovery amounts to be included in the recovery factor for the period January 2005 through December 2005?

PS/CHURBUCK: No position at this time. This cannot be determined until the resolution of the company specific issues.

ISSUE 6: What are the appropriate levelized fuel cost recovery factors for the period January 2005 through December 2005?

PS/CHURBUCK: No position at this time.

ISSUE 7: What are the appropriate fuel recovery line loss multipliers to be used in calculating the fuel cost recovery factors charged to each rate class/delivery voltage level class?

PS/CHURBUCK: No position at this time.

ISSUE 8: What are the appropriate fuel cost recovery factors for each rate class/delivery voltage level class adjusted for line losses?

PS/CHURBUCK: No position at this time. This cannot be determined until the resolution of the company specific issues.

ISSUE 9: What should be the effective date of the fuel adjustment charge and capacity cost recovery charge for billing purposes?

PS/CHURBUCK: No position at this time.

ISSUE 10: What are the appropriate actual benchmark levels for calendar year 2004 for gains on non-separated wholesale energy sales eligible for a shareholder incentive?

PS/CHURBUCK: No position at this time.

ISSUE 11: What are the appropriate estimated benchmark levels for calendar year 2005 for gains on non-separated wholesale energy sales eligible for a shareholder incentive?

PS/CHURBUCK: No position at this time.

ISSUE 12: Should each investor-owned utility be required to report its capacity charges and costs, estimated and actual, for wholesale capacity sales and purchases in a schedule similar in format to Schedules E-6, A-6, E-7, A-7, E-8, A-8, E-9, and A-9?

PS/CHURBUCK: No position at this time.

COMPANY-SPECIFIC FUEL ADJUSTMENT ISSUES

Progress Energy Florida

ISSUE 13A: Has Progress Energy Florida confirmed the validity of the methodology used to determine the equity component of Progress Fuels Corporation's

capital structure for calendar year 2003?

PS/CHURBUCK: No position at this time.

ISSUE 13B: Has Progress Energy Florida properly calculated the 2003 price for waterborne transportation services provided by Progress Fuels Corporation?

PS/CHURBUCK: No position at this time.

ISSUE 13C: Should the Commission defer all issues related to the purchased power agreements between Progress Energy Florida and Shady Hills Power Company, LLC and Progress Energy Florida and Southern Company to a separate docket?

PS/CHURBUCK: No position at this time.

ISSUE 13D: If the Commission does not defer all issues related to the purchased power agreements to a separate docket, should the Commission require Progress Energy Florida to explore alternatives in the wholesale market prior to seeking approval of the purchased power agreements?

PS/CHURBUCK: No position at this time.

ISSUE 13E: If the Commission does not defer all issues related to the purchased power agreements to a separate docket, should the Commission approve the tolling agreement between Progress Energy Florida and Shady Hills Power Company, LLC for cost recovery purposes?

PS/CHURBUCK: No position at this time.

ISSUE 13F: If the Commission does not defer all issues related to the purchased power agreements to a separate docket, should the Commission approve the Unit Power Sales (UPS) agreement between Progress Energy Florida and Southern Company for cost recovery purposes?

PS/CHURBUCK: No position at this time.

ISSUE 13G: Pursuant to Order No. PSC-93-1331-FOF-EI, in Docket No. 930001-EI, issued September 13, 1993, should the Commission make an adjustment to Progress Energy Florida's 2002 and 2003 waterborne coal transportation costs to account for upriver costs from mine to barge for coal commodity contracts which are quoted FOB Barge?

PS/CHURBUCK: No position at this time.

ISSUE 13H: Pursuant to Order No. PSC-94-0390-FOF-EI, in Docket No. 940001-EI, issued April 4, 1994, should the Commission make an adjustment to Progress Energy Florida's 2001-2003 waterborne coal transportation costs to account for transloading costs for coal commodity contracts which are quoted FOB Barge?

PS/CHURBUCK: No position at this time.

ISSUE 13I: Pursuant to Order No. PSC-04-0713-AS-EI, in Docket No. 031057-EI, issued July 20, 2004, has Progress Energy Florida made the appropriate adjustments to its 2004 and 2005 waterborne coal transportation costs for recovery purposes?

PS/CHURBUCK: No position at this time.

ISSUE 13J: Has Progress Energy Florida provided sufficient evidence of fuel savings to justify charging depreciation and a return in the amount of approximately \$37 million related to the Hines plant?

PS/CHURBUCK: No position at this time.

Florida Power & Light Company

ISSUE 14A: Should the Commission defer all issues related to the purchased power agreements between FPL and Southern Company to a separate docket?

PS/CHURBUCK: Yes. Churbuck and Power Systems understand that the purpose of this docket is to review and establish 2005 fuel factors. The contracts for which FPL seeks "preapproval" do not call for the delivery of energy and capacity until the summer of 2010. FPL's efforts to force the review and approval of these contracts in an abbreviated time frame should not be permitted. Bifurcating FPL's request for contract approval will enable parties, staff, and the Commission to thoroughly and completely analyze these contracts and the potential impact on FPL consumers if the contracts are approved or disapproved. Bifurcating the contract issues from this docket avoids a rush to judgment.

ISSUE 14B: If the Commission does not defer all issues related to the purchased power agreements to a separate docket, should the Commission require FPL to explore alternatives in the wholesale market prior to seeking approval of the purchased power agreements?

PS/CHURBUCK: Yes. Captive consumers of FPL energy, such as Churbuck and Power Systems, suggest that the Commission should require FPL to meet its burden to prove it has fully reviewed and analyzed all options available to meet the capacity needs of its customers at the lowest possible cost. FPL has failed to provide sufficient evidence that it has met this burden.

ISSUE 14C: Should the Commission approve the three UPS agreements between FPL and Southern Company for cost recovery purposes?

PS/CHURBUCK: No, not at this time. FPL has failed to prove that it has adequately reviewed and analyzed all alternatives to meet the needs of its consumers or that these agreements meet the capacity needs of its customers at the lowest possible cost. Additionally, FPL has failed to establish that these contracts were not influenced by market power. As SCSJ and its corporate affiliates have currently failed, by their own submission, one of the indicative tests used by FERC for determining market power, the Commission should not approve these contracts at this time, especially considering that energy and capacity is not due to be delivered under these contracts until the summer of 2010.

Florida Public Utilities Company

ISSUE 15A: Should the Commission adjust FPUC's true-up balances to account for the unbundling of the Gross Receipts Tax from FPUC's base rates by Order No. PSC-04-0369-AS-EI, in Docket No. 030438-EI, issued April 6, 2004?

PS/CHURBUCK: No position at this time.

Tampa Electric Company

ISSUE 17A: What is the appropriate 2003 waterborne coal transportation benchmark price for transportation services provided by affiliates of Tampa Electric Company?

PS/CHURBUCK: No position at this time.

ISSUE 17B: Has Tampa Electric Company adequately justified any costs associated with transportation services provided by affiliates of Tampa Electric Company that exceed the 2003 waterborne transportation benchmark price?

PS/CHURBUCK: No position at this time.

ISSUE 17C: Based on the Commission's decision at the September 21, 2004, Agenda Conference in Docket No. 031033-EI, has Tampa Electric Company made the appropriate adjustments to its 2004 and 2005 waterborne coal transportation costs for recovery purposes?

PS/CHURBUCK: No position at this time.

ISSUE 17D: Has Tampa Electric calculated the appropriate interest on its 2003 over-

recovery balance?

PS/CHURBUCK: No position at this time.

ISSUE 17E: Are the fuel charges Tampa Electric expects to incur for its wholesale energy purchases from Hardee Power Partners for 2005 reasonable?

PS/CHURBUCK: No position at this time.

ISSUE 17F: Should the Commission approve Tampa Electric's purchased power agreement for 150 MW of non-firm energy referenced in Benjamin F. Smith's direct testimony for cost recovery purposes?

PS/CHURBUCK: No position at this time.

GENERIC GENERATING PERFORMANCE INCENTIVE FACTOR ISSUES

ISSUE 18: What is the appropriate generation performance incentive factor (GPIF) reward or penalty for performance achieved during the period January 2003 through December 2003 for each investor-owned electric utility subject to the GPIF?

PS/CHURBUCK: No position at this time.

ISSUE 19: What should the GPIF targets/ranges be for the period January 2005 through December 2005 for each investor-owned electric utility subject to the GPIF?

PS/CHURBUCK: No position at this time.

COMPANY-SPECIFIC GENERATING PERFORMANCE INCENTIVE FACTOR ISSUES

Gulf Power Company

ISSUE 22A: Should the Commission approve the generating units proposed by Gulf Power Company for the company's 2005 GPIF units?

PS/CHURBUCK: No position at this time.

ISSUE 22B: Should the Commission consider excluding the Daniel units from the 2004 GPIF reward/ penalty calculation due to the burning of low Btu coal at those units in some months?

PS/CHURBUCK: No position at this time.

ISSUE 22C: Should the Commission approve the exclusion of the Daniel units from the 2005 heat rate targets?

PS/CHURBUCK: No position at this time.

GENERIC CAPACITY COST RECOVERY FACTOR ISSUES

ISSUE 24: What are the appropriate capacity cost recovery true-up amounts for the period January 2003 through December 2003?

PS/CHURBUCK: No position at this time.

ISSUE 25: What are the appropriate capacity cost recovery true-up amounts for the period January 2004 through December 2004?

PS/CHURBUCK: No position at this time.

ISSUE 26: What are the appropriate total capacity cost recovery true-up amounts to be collected/refunded during the period January 2005 through December 2005?

PS/CHURBUCK: No position at this time.

ISSUE 27: What are the appropriate projected net purchased power capacity cost recovery amounts to be included in the recovery factor for the period January 2005 through December 2005?

PS/CHURBUCK: No position at this time.

ISSUE 28: What are the appropriate jurisdictional separation factors for capacity revenues and costs to be included in the recovery factor for the period January 2005 through December 2005?

PS/CHURBUCK: No position at this time.

ISSUE 29: What are the appropriate capacity cost recovery factors for the period January 2005 through December 2005?

PS/CHURBUCK: No position at this time.

COMPANY-SPECIFIC CAPACITY COST RECOVERY FACTOR ISSUES

Progress Energy Florida

ISSUE 30A: Are Progress Energy Florida's actual and projected expenses for 2003 through 2005 for its post-September 11, 2001, security measures

reasonable for cost recovery purposes?

PS/CHURBUCK: No position at this time.

Florida Power & Light Company

ISSUE 31A: Are Florida Power & Light's actual and projected expenses for 2003 through 2005 for its post-September 11, 2001, security measures reasonable for cost recovery purposes?

PS/CHURBUCK: No position at this time.

Tampa Electric Company

ISSUE 33A: Are Tampa Electric Company's actual and projected expenses for 2003 through 2005 for its post-September 11, 2001, security measures reasonable for cost recovery purposes?

PS/CHURBUCK: No position at this time.

F. STIPULATED ISSUES:

None.

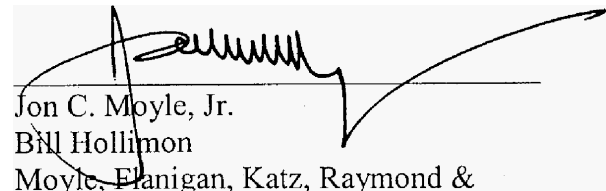
G. PENDING MOTIONS/PETITIONS:

Churbuck and Power Systems each have two pending matters before the Commission:

1. Petition to Intervene filed by Power Systems on September 17, 2004 and Petition to Intervene filed by Churbuck on September 21, 2004; and
2. Motion to remove issues related to proposed unit power sales agreements from fuel adjustment docket and notice of joinder of joint motion of OPC and FIPUG to remove issues filed October 7, 2004

H. OTHER MATTERS:

None at this time.



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Attorneys for the Power Systems Mfg. LLC
and Tom Churbuck

CERTIFICATE OF SERVICE

I **HEREBY CERTIFY** that a true and correct copy of the foregoing Prehearing Statement of Issues and Positions of Churbuck and Power Systems has been furnished by hand delivery to those marked with an asterick * and U.S. Mail to those without an asterick this 18th day of October, 2004, to the following:

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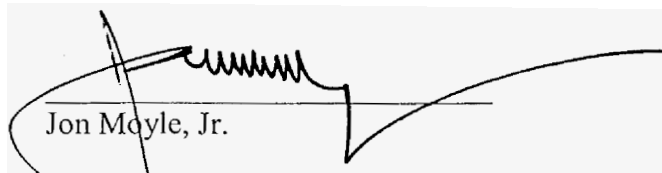
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