

# ORIGINAL

**Timolyn Henry**

**From:** Tim Perry [tperry@mac-law.com]  
**Sent:** Monday, November 01, 2004 4:06 PM  
**To:** Filings@psc.state.fl.us  
**Subject:** Docket 040001-EI -- Request for Production of Documents

1. Timothy J. Perry, McWhirter Reeves, 117 S. Gadsden Street, Tallahassee, FL 32301, (850) 222-2525, [tperry@mac-law.com](mailto:tperry@mac-law.com) is responsible for this electronic filing;
2. The filing is to be made in Docket No. 040001-EI, *In re: Fuel and Purchased Power Cost Recovery Clause with Generating Performance Incentive Factor*;
3. The filing is made on behalf of the Florida Industrial Power Users Group;
4. The total number of pages is 12; and
5. Attached to this e-mail in Adobe format is the Florida Industrial Power Users Group's Objections and Responses to Florida Power & Light Company's First Request for Production of Documents (Nos. 1-16)

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ORIGINAL

**BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION**

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

Docket No. 040001-EI  
Filed: November 1, 2004

**THE FLORIDA INDUSTRIAL POWER USERS GROUP'S OBJECTIONS AND  
RESPONSES TO FLORIDA POWER & LIGHT COMPANY'S FIRST REQUEST FOR  
PRODUCTION OF DOCUMENTS (NOS. 1-16)**

Pursuant to Rule 28-106.206, Florida Administrative Code, and Rules 1.280 and 1.350, Florida Rules of Civil Procedure, the Florida Industrial Power Users Group (FIPUG), submits its General Objections to Florida Power & Light Company's (FPL) First Request for Production of Documents (Nos. 1-16).

**OBJECTIONS TO DEFINITIONS**

FIPUG objects to FPL's definition of "FIPUG." FPL's definition of "FIPUG" inappropriately attempts to include FIPUG's attorneys. FIPUG objects to this definition on the grounds that it is harassing, annoying, and oppressive. Further, any such information in the possession, custody or control of FIPUG's attorneys would be protected by the attorney-client privilege and/or work product privilege. Additionally, given the breadth and irrelevance of many of the questions, any such documents may not be within FIPUG's custody or control.

**DOCUMENTS REQUESTED**

1. Provide copies of any and all documents evidencing the identity of the members of FIPUG for the time period of 2002 through 2004.

**OBJECTION:** FIPUG objects to this request as invalid on its face because it is overly broad, vague and unduly burdensome as it seeks the production of "any and all" documents. FIPUG further objects to this request as invalid on its face because it is harassing, annoying, oppressive, irrelevant, not reasonably calculated to lead to the discovery of admissible evidence, and any such information sought would be protected by the attorney-client privilege and/or work product privilege. Additionally, FIPUG objects to this request because it has already identified the FIPUG members who are participating in this docket in response to FPL Interrogatory No. 1.

2. Provide copies of any and all documents evidencing the identity of any members of FIPUG, or affiliates of FIPUG members, that have engaged or currently engage in the business of selling power on the wholesale power market for the time period of 2002 through 2004.

**OBJECTION:** FIPUG objects to this request as invalid on its face because it is overly broad, vague and unduly burdensome as it seeks the production of “any and all” documents. FIPUG further objects to this request as invalid on its face because it is harassing, annoying, oppressive, irrelevant, not reasonably calculated to lead to the discovery of admissible evidence, and any such information sought would be protected by the attorney-client privilege and/or work product privilege.

3. Provide copies of any and all documents evidencing any financial backing or compensation, in any form, provided to FIPUG, including FIPUG’s counsel, during the period of 2002 through 2004 by entities that engage in the business of selling power on the wholesale power market.

**OBJECTION:** FIPUG objects to this request as invalid on its face because it is overly broad, vague and unduly burdensome as it seeks the production of “any and all” documents. FIPUG further objects to this request as invalid on its face because it is harassing, annoying, oppressive, irrelevant, not reasonably calculated to lead to the discovery of admissible evidence, and any such information sought would be protected by the attorney-client privilege and/or work product privilege. In addition, Order Nos. PSC-04-0498-PCO-EI, PSC-04-0547-PCO-EI, and decisional case law hold that information, if any, regarding the funding of litigation efforts is not discoverable.

In addition, the law firm of McWhirter Reeves objects to this request as invalid on its face on the grounds that the request is harassing, annoying, oppressive irrelevant, not reasonably calculated to lead to the discovery of admissible evidence, and any such information sought would be protected by the attorney-client privilege and/or work product privilege. Moreover, Order Nos. PSC-04-0498-PCO-EI, PSC-04-0547-PCO-EI, and decisional case law hold that information, if any, regarding the funding of litigation efforts is not discoverable.

4. Provide copies of any and all documents evidencing any expenses or compensation of any time, including the financing of expert witness expenses, that were shared between FIPUG and any entity that engages in the business of selling power on the wholesale power market during the period of 2002 and 2004.

**OBJECTION:** FIPUG objects to this request as invalid on its face because it is overly broad, vague and unduly burdensome as it seeks the production of “any and all” documents. FIPUG further objects to this request as invalid on its face because it is harassing, annoying, oppressive, irrelevant, not reasonably calculated to lead to the discovery of admissible evidence, and any such information sought would be protected by the attorney-client privilege and/or work product privilege. In addition, Order Nos. PSC-04-0498-PCO-EI, PSC-04-0547-PCO-EI, and decisional case law hold that information, if any, regarding the funding of litigation efforts is not discoverable.

5. Provide copies of any and all documents evidencing any expenses, financing, or money that the law firm of Moyle, Flannigan, Katz, Raymond & Sheean, P.A., or any member of that firm has provided or has agreed to provide to FIPUG.

**OBJECTION:** FIPUG objects to this request as invalid on its face because it is overly broad, vague and unduly burdensome as it seeks the production of “any and all” documents. FIPUG further objects to this request as invalid on its face because it is harassing, annoying, oppressive, irrelevant, not reasonably calculated to lead to the discovery of admissible evidence, and any such information sought would be protected by the attorney-client privilege and/or work product privilege. In addition, Order Nos. PSC-04-0498-PCO-EI, PSC-04-0547-PCO-EI, and decisional case law hold that information, if any, regarding the funding of litigation efforts is not discoverable.

6. Provide copies of any and all documents evidencing any expenses of any type, including the financing of expert witnesses expenses, that were shared between FIPUG or FIPUG’s counsel and the law firm of Moyle, Flannigan, Katz, Raymond & Sheean, P.A., or any member of that firm or representative of the merchant power industry.

**OBJECTION:** FIPUG objects to this request as invalid on its face because it is overly broad, vague and unduly burdensome as it seeks the production of “any and all” documents. FIPUG further objects to this request as invalid on its face because it is harassing, annoying, oppressive, irrelevant, not reasonably calculated to lead to the discovery of admissible evidence, and any such information sought would be protected by the attorney-client privilege and/or work product privilege. In addition, Order Nos. PSC-04-0498-PCO-EI, PSC-04-0547-PCO-EI, and decisional case law hold that information regarding the funding of litigation efforts is not discoverable.

In addition, the law firm of McWhirter Reeves objects to this request as invalid on its face on the grounds that the request is harassing, annoying, oppressive irrelevant, not reasonably calculated to lead to the discovery of admissible evidence, and any such information sought would be protected by the attorney-client privilege and/or work product privilege. Moreover, Order Nos. PSC-04-0498-PCO-EI, PSC-04-0547-PCO-EI, and decisional case law hold that information, if any, regarding the funding of litigation efforts is not discoverable.

7. Provide copies of any and all documents evidencing expenses shared or compensation provided, in any form, to FIPUG for the period 2002 through 2004, by an association, lobbying organization, or entity of any form that is involved in promoting the interests of entities that engage in the sale of electricity on the wholesale power market.

**OBJECTION:** FIPUG objects to this request as invalid on its face because it is overly broad, vague and unduly burdensome as it seeks the production of “any and all” documents. FIPUG further objects to this request as invalid on its face because it is harassing, annoying, oppressive, irrelevant, not reasonably calculated to lead to the discovery of admissible evidence, and any such information sought would be protected by the attorney-client privilege and/or work product privilege. In addition, Order Nos. PSC-04-0498-PCO-EI, PSC-04-0547-PCO-EI, and decisional case law hold that information, if any, regarding the funding of litigation efforts is not discoverable.

8. Provide copies of all documents evidencing the terms of your involvement in the engagement of Mr. David E. Dismukes, in Docket No. 040001-EI.

**OBJECTION:** FIPUG objects to this request as invalid on its face because it is overly broad, vague and unduly burdensome as it seeks the production of “any and all” documents. FIPUG further objects to this request as invalid on its face because it is harassing, annoying, oppressive, irrelevant, not reasonably calculated to lead to the discovery of admissible evidence, and any such information sought would be protected by the attorney-client privilege and/or work product privilege.

9. Provide copies of all documents evidencing the circumstances under which FIPUG agreed to co-sponsor the testimony of Mr. David E. Dismukes, in Docket No. 040001-EI.

**OBJECTION:** FIPUG objects to this request as invalid on its face because it is overly broad, vague and unduly burdensome as it seeks the production of “any and all” documents. FIPUG further objects to this request as invalid on its face because it is harassing, annoying, oppressive, irrelevant, not reasonably calculated to lead to the discovery of admissible evidence, and any such information sought would be protected by the attorney-client privilege and/or work product privilege.

10. Provide copies of all documents evidencing the terms of your engagement of Kerrick Knauth in Docket No. 040001-EI.

**OBJECTION:** FIPUG objects to this request as invalid on its face because it is overly broad, vague and unduly burdensome as it seeks the production of “any and all” documents. FIPUG further objects to this request as invalid on its face because it is harassing, annoying, oppressive, irrelevant, not reasonably calculated to lead to the discovery of admissible evidence,



and any such information sought would be protected by the attorney-client privilege and/or work product privilege.

11. Provide copies of all documents evidencing the terms of your engagement of Michael F. Vogt in Docket No. 040001-EI.

**OBJECTION:** FIPUG objects to this request as invalid on its face because it is overly broad, vague and unduly burdensome as it seeks the production of “any and all” documents. FIPUG further objects to this request as invalid on its face because it is harassing, annoying, oppressive, irrelevant, not reasonably calculated to lead to the discovery of admissible evidence, and any such information sought would be protected by the attorney-client privilege and/or work product privilege.

12. Provide copies of any and all documents evidencing your relationship with the Calpine Corporation as it relates to Docket No. 040001-EI.

**OBJECTION:** FIPUG objects to this request as invalid on its face because it is overly broad, vague and unduly burdensome as it seeks the production of “any and all” documents. FIPUG further objects to this request as invalid on its face because it is harassing, annoying, oppressive, irrelevant, not reasonably calculated to lead to the discovery of admissible evidence, and any such information sought would be protected by the attorney-client privilege and/or work product privilege.

13. For each Witness who has submitted or will submit testimony on your behalf in Docket No. 040001-EI:

a. Please produce all direct, rebuttal and/or surrebuttal testimony filed with any Public Utility Commission or Public Service Commission, or the Federal Energy Regulatory Commission in the last five years relating to the same and/or similar topic on which the witness is filing testimony in this proceeding.

**RESPONSE RE DISMUKES:** See Thomas K. Churbuck’s Response to FPL’s Request to Produce No. 14.

**RESPONSE RE KNAUTH:** None.

**RESPONSE RE VOGT:** None.

b. Please produce all articles published or submitted for publication by the witness in the last five years on the same topic and/or a topic similar to the one that the witness is filing testimony on this proceeding.

**RESPONSE RE DISMUKES:** See Thomas K. Churbuck's Response to FPL's Request to Produce No. 14.

**RESPONSE RE KNAUTH:** None.

**RESPONSE RE VOGT:** None.

c. Please provide the scope of the Witness' employment in Docket No. 040001-EI and the compensation for such service.

**OBJECTION:** FIPUG objects to this request as invalid on its face because it does not seek the production of documents. Rather, the request is in the form of an interrogatory, and thus is not permissible.

14. For each generation resource identified in the Direct Testimonies of Michael F. Vogt, and Kerrick Knauth filed on your behalf in Docket No. 040001-EI as an alternative to the contracts with Southern Company for which FPL seeks approval in Docket No. 040001-EI, provide:

a. All reports, studies, analysis and other documentation evidencing the availability of such generation source to deliver power to FPL commencing in 2010;

**OBJECTION:** FIPUG objects to the request as invalid on its face because it is overly broad, vague and unduly burdensome as it seeks the production of "all" documents. FIPUG further objects to this request as invalid on its face on the grounds that the request is harassing, annoying, oppressive, and not reasonably calculated to lead to the discovery of admissible evidence. Subject to and without waiving these objections, FIPUG states:

**RESPONSE RE KNAUTH:** N/A

**RESPONSE RE VOGT:** None. However, the following major activities have been completed for the generation resource identified in Mr. Vogt's testimony: securing real estate for the project site, conducting community relations work, filing applications for water supply, wastewater discharge, and solid waste disposal, negotiation of a tax agreement and memorandum of understanding with Georgia-Pacific regarding reuse of effluent (to be used as water supply for the project). Additionally, LS Power expects to file the air permit application in the next several weeks. LS Power Development, LLC expects to have all permitting completed sometime in the second half of 2005. This would allow for sufficient time to construct the plant and commence operation in 2010.

b. All reports, studies, analysis and other documentation evidencing how the generation source is or will be financed;

**OBJECTION RE KNAUTH:** FIPUG objects to the request as invalid on its face

because it is overly broad, vague and unduly burdensome as it seeks the production of "all" documents. FIPUG further objects to this request as invalid on its face on the grounds that the request is harassing, annoying, oppressive, and not reasonably calculated to lead to the discovery of admissible evidence. FIPUG objects to this request on the grounds that the information sought is not in FIPUG's possession, custody or control. FIPUG further objects that such documents would contain confidential proprietary business information which is protected by Sections 90.506 and 366.093(2), Florida Statutes. Subject to and without waiving these objections, FIPUG states:

**RESPONSE RE KNAUTH:** None. The plant is not financed, although the owners contemplate obtaining financing in the future.

**OBJECTION RE VOGT:** FIPUG objects to the request as invalid on its face because it is overly broad, vague and unduly burdensome as it seeks the production of "all" documents. FIPUG further objects to this request as invalid on its face on the grounds that the request is harassing, annoying, oppressive, and not reasonably calculated to lead to the discovery of admissible evidence. Subject to and without waiving these objections, FIPUG states:

**RESPONSE RE VOGT:** None. The project will be "project financed" once the project is fully developed.

c. All reports, studies, analysis and other documentation evidencing the financial viability of the owner of the generation resource;

**OBJECTION RE KNAUTH:** FIPUG objects to the request as invalid on its face because it is overly broad, vague and unduly burdensome as it seeks the production of "all" documents. FIPUG further objects to this request as invalid on its face on the grounds that the request is harassing, annoying, oppressive, and not reasonably calculated to lead to the discovery of admissible evidence. FIPUG objects to this request on the grounds that the information sought is not in FIPUG's possession, custody or control. FIPUG further objects that such documents would contain confidential proprietary business information which is protected by Sections 90.506 and 366.093(2), Florida Statutes. Subject to and without waiving these objections, FIPUG states:

**RESPONSE RE KNAUTH:** See the attached Balance Sheet for Vandolah Power Company, L.L.C.

**OBJECTION RE VOGT:** FIPUG objects to the request as invalid on its face because it is overly broad, vague and unduly burdensome as it seeks the production of "all" documents. FIPUG further objects to this request as invalid on its face on the grounds that the request is harassing, annoying, oppressive, and not reasonably calculated to lead to the discovery of admissible evidence. Subject to and without waiving these objections, FIPUG states:

**RESPONSE RE VOGT:** None. See response to Request No. 14(b) above.

d. All reports, studies, analysis and other documentation evidencing the ability of the



owner(s) of such generation resource to secure transmission access and reservations sufficient to transmit the output of the generation resource to inter-ties with FPL.

**OBJECTION:** FIPUG objects to the request as invalid on its face because it is overly broad, vague and unduly burdensome as it seeks the production of “all” documents. FIPUG further objects to this request as invalid on its face on the grounds that the request is harassing, annoying, oppressive, and not reasonably calculated to lead to the discovery of admissible evidence. Subject to and without waiving these objections, FIPUG states:

**RESPONSE RE KNAUTH:** See attached Generation Interconnection Study. Also refer to FPL’s Ten-Year Site Plan, which is in FPL’s possession, custody and control.

**RESPONSE RE VOGT:** None. However, LS Power Development would expect to utilize a strategy similar to what FPL is using for the PPAs being analyzed in this docket. Based on the testimony and exhibits of Mr. Hartman, it is LS Power Development’s understanding that the burden of obtaining transmission service from the generation source to FPL lies with FPL. Further, it is LS Power’s understanding that FPL would be “rolling over” existing transmission service to accomplish this and FPL should be capable of using this same transmission service to deliver power from the generation resource to the FPL inter-ties.

15. For each solid-fuel generation resource that is identified in the Direct Testimonies of Michael F. Vogt and Kerrick Knauth filed on your behalf in Docket No. 040001-EI as an alternative to the contracts with Southern Company for which FPL seeks approval in Docket No. 040001-EI provide:

a. All reports, studies, analysis and similar documentation evidencing the experience of the owner(s) of such generation resource in developing a solid fuel project to the point of commercial operation;

**OBJECTION:** FIPUG objects to the request as invalid on its face because it is overly broad, vague and unduly burdensome as it seeks the production of “[a]ll . . . and similar” documents. FIPUG further objects to this request as invalid on its face on the grounds that the request is harassing, annoying, oppressive, and not reasonably calculated to lead to the discovery of admissible evidence. Subject to and without waiving these objections, FIPUG states:

**RESPONSE RE KNAUTH:** N/A.

**RESPONSE RE VOGT:** None. However, LS Power Development, LLC and its predecessor companies have extensive experience and a proven track record of developing and financing large-scale generation facilities, as well as, bringing them to the point of commercial operation. Additionally, LS Power Development, LLC’s most advanced solid fuel development project, the Plum Point Energy Station, an 800 MW pulverized coal-fired power generation facility, located in Osceola, Arkansas, has secured real estate rights and major permits for the

project.

b. All reports, studies, analysis and similar documentation evidencing the experience of the owner(s) of such generation resource in developing a solid fuel project to the point of commencing construction;

**OBJECTION:** FIPUG objects to the request as invalid on its face because it is overly broad, vague and unduly burdensome as it seeks the production of “[a]ll . . . and similar” documents. FIPUG further objects to this request as invalid on its face on the grounds that the request is harassing, annoying, oppressive, and not reasonably calculated to lead to the discovery of admissible evidence. Subject to and without waiving these objections, FIPUG states:

**RESPONSE RE KNAUTH:** N/A.

**RESPONSE RE VOGT:** None. See response to Request No. 15(a) above.

c. All reports, studies, analysis and similar documentation evidencing the experience of the owner(s) of such generation resource in obtaining financing;

**OBJECTION:** FIPUG objects to the request as invalid on its face because it is overly broad, vague and unduly burdensome as it seeks the production of “[a]ll . . . and similar” documents. FIPUG further objects to this request as invalid on its face on the grounds that the request is harassing, annoying, oppressive, and not reasonably calculated to lead to the discovery of admissible evidence. Subject to and without waiving these objections, FIPUG states:

**RESPONSE RE KNAUTH:** N/A.

**RESPONSE RE VOGT:** None. See response to Request No. 15(a) above.

d. All reports, studies, analysis and similar documentation evidencing the experience of the owner(s) of such generation resource in marketing the output of a solid fuel generating facility to a creditworthy buyer in the form of a long-term (greater than five years) purchase power agreement.

**OBJECTION:** FIPUG objects to the request as invalid on its face because it is overly broad, vague and unduly burdensome as it seeks the production of “[a]ll . . . and similar” documents. FIPUG further objects to this request as invalid on its face on the grounds that the request is harassing, annoying, oppressive, and not reasonably calculated to lead to the discovery of admissible evidence. FIPUG further objects that such documents would contain confidential proprietary business information which is protected by Sections 90.506 and 366.093(2), Florida Statutes. Subject to and without waiving these objections, FIPUG states:

**RESPONSE RE KNAUTH:** N/A.

**RESPONSE RE VOGT:** LS Power Development has conducted marketing activities for sale of the output of several solid fuel generating facilities to creditworthy buyers in the form of a long-term power purchase agreements. This would include detailed discussions with customers associated with the Plum Point project referred to in the response to Request No. 15(a) above. All of these marketing activities and related documents are considered confidential proprietary business information the disclosure of which would cause irreparable harm.

e. All reports, studies, analysis and similar documentation evidencing the experience of the owner(s) of such generation resource in obtaining all necessary permitting for a solid fuel project, including the time frame within which such permitting was achieved;

**OBJECTION:** FIPUG objects to the request as invalid on its face because it is overly broad, vague and unduly burdensome as it seeks the production of “[a]ll . . . and similar” documents. The request is further burdensome as it would require extensive resources and manpower to respond. FIPUG further objects to this request as invalid on its face on the grounds that the request is harassing, annoying, oppressive, and not reasonably calculated to lead to the discovery of admissible evidence. Subject to and without waiving these objections, FIPUG states:

**RESPONSE RE KNAUTH:** N/A.

**RESPONSE RE VOGT:** As noted in the response to Request No. 15(a) above, LS Power Development, LLC has obtained all major permits for the Plum Point Energy Station project. These permits include: the PSD and Title V Air Permit, NPDES permit, wastewater disposal system construction permit, solid waste disposal permit, U.S. Army Corps of Engineers permit, FAA determination and Arkansas Public Service Commission certification of electrical interconnection facilities.

f. All reports, studies, analysis and similar documentation evidencing the experience of the owner(s) of such generation resource in obtaining zoning approvals for a solid fuel project.

**OBJECTION:** FIPUG objects to the request as invalid on its face because it is overly broad, vague and unduly burdensome as it seeks the production of “[a]ll . . . and similar” documents. The request is further burdensome as it would require extensive resources and manpower. FIPUG further objects to this request as invalid on its face on the grounds that the request is harassing, annoying, oppressive, and not reasonably calculated to lead to the discovery of admissible evidence. Subject to and without waiving these objections, FIPUG states:

**RESPONSE RE KNAUTH:** N/A.

**RESPONSE RE VOGT:** The project identified in Mr. Vogt’s testimony does not require zoning approval.

16. Provide copies of any and all documents you identified or relied upon in your responses to FPL’s First Set of Interrogatories.

**RESPONSE:** None.

s/ Timothy J. Perry  
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Attorneys for Florida Industrial Power Users Group

## CERTIFICATE OF SERVICE

**I HEREBY CERTIFY** that a true and correct copy of the foregoing Florida Industrial Power Users Group's Response to Florida Power & Light Company's First Request for Production of Documents (Nos. 1-16) has been furnished by electronic mail, U.S. Mail and (\*) Federal Express this 1<sup>st</sup> day of November 2004, to the following:

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s/ Timothy J. Perry  
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