

ORIGINAL

Matilda Sanders

**From:** Mike Twomey [miketwomey@talstar.com]  
**Sent:** Thursday, October 06, 2005 2:57 PM  
**To:** Filings@psc.state.fl.us  
**Cc:** ROBERTS.BRENDA; CHRISTENSEN.PATTY; McGLOTHLIN.JOSEPH; Charles Beck; MERCHANT.TRICIA; DAVIS.PHYLLIS; BURNS.DANA; Adrienne Vining; Agnela Llewellyn, Administrator, Regulatory Coordination, TECO; Bill Walker; Cheryl Martin/Florida Public Utilities Company; Gary V. Perko; Jeffrey A. Stone; Jennifer Rodan; Jim McGee; John McWhirter; John T. Butler; Jon C. Moyle, Jr.; Lee Willis; Mark Hoffman; Schef Wright; Susan D. Ritenour; Thomas K. Churbuck; Tim Perry; Wade Litchfield  
**Subject:** e-filing AARP's Motion to file testimony one day out of time  
**Attachments:** AARP PSC Docket 050001Motion to file out of time October 6, 2005.doc

Mike Twomey wrote:

Electronic Filing

a. Person responsible for this electronic filing:

Mike Twomey  
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b. Docket No. 050001-EI

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

c. Document being filed on behalf of AARP

CMP \_\_\_\_\_

d. There are a total of 4 pages.

COM \_\_\_\_\_

e. The document attached for electronic filing is the AARP's  
Motion to file testimony one day out of time.

CTR \_\_\_\_\_

ECR \_\_\_\_\_

(See attached Word file: )

GCL \_\_\_\_\_

OPC \_\_\_\_\_

Mike Twomey

RCA \_\_\_\_\_

SCR \_\_\_\_\_

SGA \_\_\_\_\_

SEC   1  

OTH \_\_\_\_\_

10/6/2005

DOCUMENT NUMBER-DATE

09582 OCT-6 05

FPSC-COMMISSION CLERK

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

|                                  |   |                        |
|----------------------------------|---|------------------------|
| In Re: Fuel and Purchased Power  | ) |                        |
| Cost Recovery Clause with        | ) | DOCKET No. 050001-EI   |
| Generating Performance Incentive | ) | FILED: October 6, 2005 |
| Factor                           | ) |                        |
| <hr/>                            |   |                        |

**MOTION TO FILE TESTIMONY ONE DAY OUT OF TIME**

AARP, pursuant to Rule 28-106.204, Florida Administrative Code and through its undersigned counsel, moves the Commission to allow it to file the prefiled testimony of Stephen A. Stewart one day out of time on October 4, 2005 and in support thereof states:

1. Pursuant to Order No. PSC-05-0281-PCO-EI, the utilities' projection filings and testimony were to be filed on September 8, 2005 and the intervenors' direct testimony and exhibits on October 3, 2005.

2. On the afternoon of October 3, 2005, the undersigned, not recognizing that prefiled testimony was not a document eligible for electronic filing with the Commission, attempted to electronically file the prefiled testimony of AARP witness Stephen A. Stewart, while simultaneously electronically copying by email all the parties to this docket with the electronic filing and testimony. Thereafter, the Clerk's Office electronically notified the undersigned that the testimony was not eligible for electronic filing, but at that point there was not sufficient time to timely physically file hard copies of the testimony before the close of business. The original and 15 copies of the testimony were filed with the Clerk's Office the next morning, Tuesday, October 4, 2005.

DOCUMENT NUMBER-DATE

09582 OCT -6 05

FPSC-COMMISSION CLERK

3. There is no prejudice to the Commission or any party to these proceedings by Stephen A. Stewart's testimony being filed the morning of October 4, 2005, as opposed to the afternoon of October 3, 2005, inasmuch as counsel for all parties to the docket, particularly those for Florida Power & Light Company, whose fuel adjustment filing Mr. Stewart's testimony addresses, were electronically transmitted the testimony the afternoon of October 3, 2005. By contrast, absent the electronic transmission of Mr. Stewart's testimony to counsel for Florida Power & Light Company, Commission Staff counsel and the other parties, they would not have received the testimony by U.S. Mail until at least the following day, at the earliest.

4. The undersigned has contacted counsel for Florida Power & Light Company, who authorized me to state his client had no objection to the instant motion, contacted counsel for the Office of Public Counsel, who authorized me to state that office supported the motion, contacted counsel for the Florida Retail Federation, who authorized me to state his client supported the motion, and contacted counsel for the Commission Staff, who authorized me to state Staff took no position on the motion. The undersigned did not attempt to contact counsel for the other utilities to this docket since only Florida Power & Light Company's fuel adjustment filing is addressed by Mr. Stewart's testimony.

WHEREFORE, since there is no demonstrated prejudice to any party by the filing of the prefiled testimony of Stephen A. Stewart on the morning of October 4, 2005 and, further, since no party objects to the filing of Mr. Stewart's testimony one day out of

time, AARP respectfully requests that the Commission enter its order approving the filing of Mr. Stewart's testimony one day out of time on October 4, 2005.

Respectfully submitted,

/s/ Michael B. Twomey  
Michael B. Twomey  
Attorney for AARP  
Post Office Box 5256  
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**CERTIFICATE OF SERVICE**

**I HEREBY CERTIFY** that a true and correct copy of the foregoing document has been furnished by electronic mail and U.S. Mail on this 6<sup>th</sup> day of October 2005 to the following:

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