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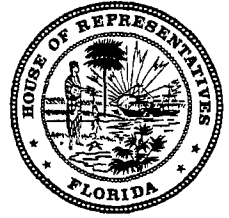
STATE OF FLORIDA
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ALLAN BENSE
Speaker



Joseph A. McGlothlin
Associate Public Counsel

May 15, 2006

Ms. Blanca S. Bayó, Director
Division of the Commission Clerk
Administrative Services
Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, FL 32399-0870

RECEIVED-PPSC
06 MAY 15 PM 4:39
COMMISSION
CLERK

RE: Progress Energy Florida, Inc.'s petition for Modification of
Reward/Penalty criteria of generating performance incentive factor mechanism – Docket No.
060001-EI

Dear Ms. Bayó:

Enclosed for filing in the above-referenced docket are the original and fifteen copies of
the Office of Public Counsel's Petition of Citizens of the State of Florida for Modification of
Reward/Penalty Criteria of Generating Performance Incentive Factor Mechanism.

DMP _____
COM 5 Please indicate the time and date of receipt on the enclosed duplicate of this letter and
return it to our office.

- CTR _____
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Sincerely,

Joseph A. McGlothlin
Associate Public Counsel

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FPSC-BUREAU OF RECORDS

DOCUMENT NUMBER-DATE
04282 MAY 15 06
FPSC-COMMISSION CLERK

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Fuel and purchased power
cost recovery clause with generating
performance incentive factor

Docket no. 060001-EI

**PETITION OF CITIZENS OF THE STATE OF FLORIDA FOR MODIFICATION OF
REWARD/PENALTY CRITERIA OF GENERATING PERFORMANCE INCENTIVE
FACTOR MECHANISM**

Pursuant to Section 350.0611(1), Florida Statutes, and Rule 28-106.201, Florida Administrative Code, the Citizens of the State of Florida, by and through the Office of Public Counsel, hereby petition the Commission to modify the reward/penalty criteria of the Generating Performance Incentive Factor ("GPIF"). Modification is needed to remedy prospectively a shortcoming in the GPIF mechanism that in the past has too frequently required customers to pay "incentive rewards" despite the absence of meaningful improvements in generating efficiency; indeed, at times, the current GPIF has required customers to pay monetary rewards to the utilities even as the utilities' generating efficiency deteriorated. In support of their Petition, Citizens state:

1. The name of the affected agency is the Florida Public Service Commission.
2. *Statement of when and how the petitioner received notice of the agency decision:* This aspect of Rule 28-106.201 is inapplicable to the instant petition. In this petition, the Citizens request the Commission to take the action described herein.
3. *The name, address, and telephone number of Petitioner and of Petitioner's representative:*

DOCUMENT NUMBER DATE

04282 MAY 15 98

FPSC-COMMISSION CLERK

Harold McLean, Public Counsel, on behalf of the
Citizens of the State of Florida
Florida Office of Public Counsel
111 West Madison Street, Room 812
Tallahassee, Florida 32399-1400

4. *A statement of how and when the petitioner received notice of the agency decision:* This aspect of Rule 28-106.201 is inapplicable to the instant Petition, through which Petitioner is requesting the Commission to take action.

5. *A statement of all issues of disputed fact:* Citizens are not in a position at this time to know whether and to what extent the facts alleged in the following paragraphs will be disputed by parties. The pertinent facts follow.

Background

6. The Generating Performance Incentive Factor (“GPIF”) was adopted in the early 1980’s as a means of providing an incentive to investor-owned utilities to operate their generating units more efficiently.

7. The GPIF focuses on two aspects of generating efficiency: heat rate, and availability. The heat rate is a measure of the efficiency with which a generating unit converts fossil energy into electrical energy. Heat rate is expressed in terms of the amount of fossil energy, measured in British Thermal Units (Btu’s), that must be consumed to generate a single kilowatt hour of electrical energy. A reduction in a heat rate value means fewer Btu’s must be consumed to generate the same amount of electricity and therefore signifies greater efficiency (and lower fuel costs), relative to the prior, higher heat rate value.

8. Availability refers to the portion of time a generating unit is capable of operating, whether or not it is actually generating electricity. If a unit is unavailable when it would be the most economical means of meeting customer demand, the utility must serve the load with a more

expensive mix of generators, and incur higher fuel costs. Unit outages, whether planned or unplanned, reduce a unit's availability. Reductions in planned and/or unplanned outages of a unit result in an increase in availability and therefore signify increases in efficiency.

9. Under the mechanism adopted in Order No. 9558, issued on September 19, 1980, the four largest investor-owned utilities—Florida Power & Light Company (FPL), Progress Energy Florida, Inc. (PEF), Tampa Electric Company (TECO), and Gulf Power Company, identify and submit for approval targeted heat rate and availability values on a projected basis for units selected to be in the program. Based on a comparison of the approved targets with actual experience for the period in which the targets are in effect, the companies are either rewarded or penalized. The amount of the reward or penalty is based on a sliding scale outlined in the "GPIF Manual," which the Commission adopted when it placed the GPIF mechanism into effect. The scale is in turn based on a calculation of the amount associated with 25 basis points on each utility's average equity investment.

The Problem

10. Historical data indicate that the GPIF has not led to sustained improvements in generating efficiency. Moreover, experience shows the GPIF mechanism's reliance on generating units' recent past operating performance as the chief predictor of future achievable performance has led to unintended and, occasionally, counterintuitive results. For example: Under the GPIF mechanism, if a utility experiences a worsening of either heat rate or availability, the new, less desirable value becomes the principal basis for the prediction of future performance. In some circumstances, this means that a utility that has been rewarded in the past for gains in efficiency may, subsequent to experiencing a deterioration in performance, thereafter be rewarded for achieving the same improvements a second time.

11. Even more significantly, the same reliance on past experience as the basis for predicting future performance also means that a utility may experience a worsening trend of efficiency over time and still receive annual monetary rewards. For example, assume a utility experiences a deterioration in heat rate from 8,100 Btu's per kWh to 8,500 Btu's per kWh (a higher heat rate signifies a decline in efficiency). Based on the recent experience, the utility sets a target of 8,400 kWh. During the projection period, it achieves 8,300 kWh. On an absolute basis, its performance has deteriorated from 8,100 to 8,300 Btu's per kWh. However, under the current GPIF mechanism, the utility would receive a reward from the Commission, paid for by the ratepayers who are being provided less efficient service by the utility relative to the prior periods. And, if in past periods the utility had improved its heat rate from, for example, 8,350 to 8,100 Btu's per kWh, and received a reward in the process, in this scenario the utility would be receiving a second reward for covering the same ground a second time.

12. These are not theoretical concerns. Information available from the Commission's public files establishes that customers have been called upon to pay utilities some \$120 million in net rewards (measured as the difference between rewards and penalties over time) during the period April 1983-December 2004. However, those payments have not led to sustained increases in efficiency. In fact, in some cases efficiency has deteriorated during the same extended time frame in which a utility has received net rewards.

13. The most striking example of this phenomenon is shown on Exhibit A to this Petition. Pages 1 and 2 of Exhibit A depict TECO's system availability (expressed as "equivalent availability factor," or EAF) and system heat rate performance, respectively, for the period October 1989 through December 2004. Over this period, TECO's actual heat rate and actual availability declined in performance. Yet, over this period, at the same time the EAF and

heat rate values—the very indicators of efficiency measured by the GPIF program-- declined, the utility qualified for and received rewards under the mechanism of the GPIF. In fact, in calendar year 2004 TECO received a \$729,534 reward payment from ratepayers for actual adjusted availability and heat rate performance that was poorer than that of calendar year 2001--a period, incidentally, during which TECO received an \$831,029 *penalty* under the GPIF program. See Exhibit B.

14. Receiving monetary “incentive rewards” for declining system performance is not solely a TECO phenomenon. PEF’s actual adjusted values for both heat rate and availability declined between 2001 and 2002; yet, PEF “earned” a greater reward in 2002 than in 2001. See Exhibit C. Similarly, Gulf Power’s efficiency, as measured by heat rate and unit availability, declined between 2001 and 2002. Gulf Power continued to qualify for a monetary reward in 2002. See Exhibit D.

15. FPL has received positive reward payments consistently since April 1990. See Exhibit E. Yet, FPL’s data reflects that it has not accomplished sustained efficiency gains across the breadth of its generating fleet. Of the 27 FPL units that are included in the GPIF program, only 16 exhibited a sustained trend of improvements in availability over the 15 year period between 1989 and 2004; of those 16, only 6 also showed trending improvement over the most recent 6 year period (1999-2004) for which data was reviewed. The pattern was worse for FPL’s heat rate values. Of 27 units, only 8 showed trending improvements over the period 1989-2004; of these, only 2 units reflected continuing improvement over the most recent 6 year period. When one considers both heat rate *and* availability, only 5 FPL units of the 27 measured demonstrate long-term trends of improvement. See Exhibit F.

16. *Ultimate facts alleged:* While the intent of the GPIF is to encourage gains in the efficient generation of electricity, experience shows that the payment of \$120 million in net rewards to participating utilities over time has not prompted sustained improvements in heat rate and unit availability. Moreover, the GPIF mechanism has required customers to pay rewards to utilities even as their efficiencies deteriorate. Especially given the obligation of utilities to strive to operate efficiently, this result is illogical. It cannot have been intended.

17. *A statement of the specific rules or statutes the petitioner contends require reversal or modification of the agency's proposed action:* Because Citizens are requesting the Commission to initiate action, this requirement of Rule 28-106.201 technically is inapplicable to the instant Petition. However, Citizens note that Section 366.07, Florida Statutes requires the Commission to take action whenever it finds that the rates, rentals, charges or classifications observed, charged or collected by any public utility, or the rules, regulations, measurements, practices or contracts relating thereto are unjust, unreasonable, or anywise in violation of law. As described above, in its present operation the GPIF is the source of rate elements or factors that are unjust and unreasonable. Similarly, Section 366.05, Florida Statutes empowers the Commission to establish fair and reasonable standards of quality and measurements. Historical data prove that in its present form the standards of quality and measurement within the GPIF are neither fair nor reasonable to customers.

OPC's Proposed Remedy

18. *A statement of the relief requested:* While the intent of the GPIF is laudable, in practice it has resulted frequently in unintended, counterproductive consequences. The data do not demonstrate that the prospect of earning rewards under the GPIF has motivated the utilities participating in the program to accomplish and maintain gains in efficiency. Even more

fundamentally, from the standpoint of fairness to customers, the data show that customers frequently have paid “incentive rewards” at the same time efficiency failed to improve, or even declined. Citizens believe the Commission did not intend to allow such illogical (and, to customers, unjust and unreasonable) consequences when it fashioned the GPIF in the early 1980’s. Citizens believe that the Commission should refine the mechanism in a manner that, when applied, will require customers to pay rewards only when meaningful gains in efficiency have been accomplished. Citizens propose a remedy that consists of two separate measures, to be implemented in distinct phases.

19. The first measure is simple in concept and will be easy to implement. The Commission should establish within the reward calculation a “dead band”—that is, a specified range beyond the approved target within which no reward would be given --designed to ensure that a utility must produce a meaningful degree of improvement that crosses the threshold created by the “deadband” before the customers are called upon to pay a reward. The second measure, to be taken up subsequently, would be the establishment of absolute values of heat rate and efficiency for each utility’s system, below which standards customers would not be required to pay rewards, regardless of the results of comparisons with targets or past periods.

20. ***Phase One: The dead band.*** The concept of a “dead band” in this instance relates to the scale of points (“Generation Performance Incentive Points,” or GPIP) above and below the target that the “GPIF Manual” delineates for the purpose of calculating rewards and/or penalties. Under the existing mechanism, a utility may score as many as 10 points above the target or 10 points below the target. Currently, if it scores any positive points, a utility is entitled to receive a reward. To mitigate customers’ exposure to the possibility that they may be required to pay “rewards” for performance that is less than exemplary, as may happen when past

performance serves as the basis for future targets, Citizens propose that the Commission modify the basis for calculating the rewards by establishing a minimum number of points that a utility must score in a given period before any reward can be earned. Such a “dead band” in the calculation formula would help insulate customers from a situation in which the GPIF formula would otherwise require customers to pay for performance that is, in terms of what is possible, mediocre or worse.

21. The concept of a “dead band” is easy to implement. The utilities would continue to set targets and compare actual experience with projections in the usual manner. The utilities also would calculate their scores in the manner currently prescribed by the GPIF manual and Commission orders. However, a utility would not receive a reward unless the utility, on an overall basis, scored the number of positive points necessary to exceed the “dead band.” Citizens assert that, as a minimum, the Commission should require a utility to score 5 positive points before receiving a reward.

22. To achieve balance, the Citizens believe a “dead band”, albeit of a different value, should also be placed on the negative side of the scale, so that a utility would not be penalized unless its performance resulted in a number of negative points greater than the “dead band” applicable to performance that fails to meet targets. In view of the utilities’ obligation to improve and maintain efficient operations, Citizens believe that on the negative side of the scale a “dead band” on the order of one-half the value of the positive “dead band” would be appropriate (e.g. a 2.5 point negative dead band would correspond to a 5 point positive “dead band”).

23. ***Phase Two: Absolute values for minimum system heat rate and availability standards.*** Citizens request the Commission to review the characteristics and experience of each

utility's system and establish minimum threshold values for the heat rate and availability standards applicable to each system. Once established, the Commission should revise the GPIF Manual to state that no reward will be granted unless a utility demonstrates that its performance for the period attained or exceeded the minimum system heat rate and availability criteria applicable to that utility. Citizens believe it is possible, feasible, and reasonable to identify minimum standards for heat rate and availability applicable to each utility, below which the utility will not be entitled to receive a reward, regardless of fluctuations over time.

24. **Timing.** Citizens submit that the first phase, which is the establishment of the dead band, can and should be approved in this docket and implemented in the upcoming projection period. Citizens expect that the second phase, consisting of the establishment of absolute minimum standards for system heat rate and availability for each utility, would take place during the following year, following an adequate period of information gathering and analysis. Ultimately, Citizens believe the GPIF mechanism should incorporate both modifications, working in tandem. However, because the "dead band" proposal does not require any changes to the manner in which the utilities measure and report their units' performance or compare that performance to the established targets under the existing GPIF regime, and because the "dead band" by itself will afford some immediate protection to customers, the Commission should not delay the implementation of the first step in needed modifications.

25. Citizens point out that the first phase requires no additional information, pleadings, or calculations to those the utilities will be required to submit in any case. The only consideration to be added is the evaluation of the proposal to place a "dead band" around the calculation of the point scale, and determine the eligibility of each utility for a reward or penalty accordingly. Citizens propose to submit testimony and exhibits in support of its "dead band"

proposal no later than May 29, 2006. The utilities and other parties could file testimony addressing the “dead band” proposal on August 8, 2006, the same date on which the utilities are currently scheduled to submit filings related to the true-up data. OPC could then submit rebuttal testimony on September 22, 2006, the existing deadline for Intervener testimony applicable to other issues. Citizens respectfully request the Commission to adjust the Case Assignment and Scheduling Record in this docket accordingly, and to issue a modified Order On Procedure.

26. Citizens do not request the Commission to implement the second aspect of the modifications to the GPIF proposed by Citizens during 2006. However, Citizens ask the Commission to permit discovery related to this phase to begin now. During prehearing procedures, OPC intends to identify this portion of Citizen’s proposal as an issue to be developed and considered during 2007.

Procedure

27. Citizens have filed this Petition in Docket No. 060001-EI, and submit that the Commission should appropriately process it in this docket. The GPIF originally was considered in the context of the docket opened to process the utilities’ fuel and purchased power cost recovery clause. The Commission receives, considers, and rules upon the utilities’ GPIF filings in this docket. The issues raised by the Petition are germane to, and can be considered in conjunction with, the Commission’s treatment of the utilities’ GPIF-related submissions.

WHEREFORE, Citizens request the Commission to:

(1) Consider the “dead band” concept proposed herein on a schedule consistent with that outlined in this Petition:

(2) Issue a proposed Order On Procedure directing utilities and other interested parties to respond to the “dead band” proposal on the dates indicated:

(3) Take evidence on the “dead band” concept proposed herein during the evidentiary hearing scheduled for November 6, 2006:

(4) Upon consideration, modify the existing Generating Performance Incentive Mechanism so as to incorporate the “dead band” concept advocated herein;

(5) Implement the “dead band” concept concurrently with its ruling on the utilities’ submissions for GPIF rewards or penalties applicable to 2007;

(6) Direct parties to address the merits of the concept of minimum threshold system availability and heat rate values raised herein during proceedings in Docket No. 070001-EI.

Harold McLean
Public Counsel


Joseph A. McGlothlin
Associate Public Counsel

Office of Public Counsel
c/o The Florida Legislature
111 West Madison Street
Room 812
Tallahassee, FL 32399-1400

DOCKET NO. 060001-EI

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing Petition has been furnished by U.S.

Mail and electronic mail to the following parties on this 15th day of May, 2006.

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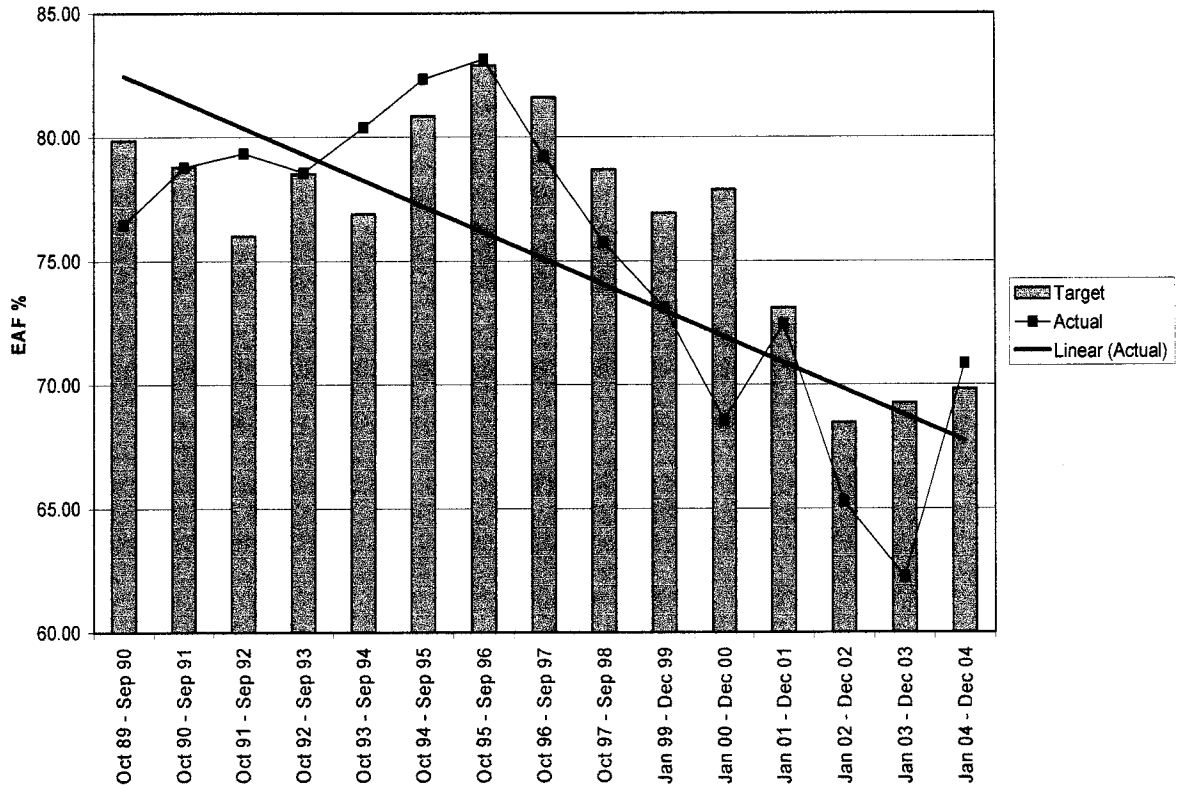
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Joseph A. McGlothlin

Tampa Electric Company System EAF



Tampa Electric Company System Heat Rate

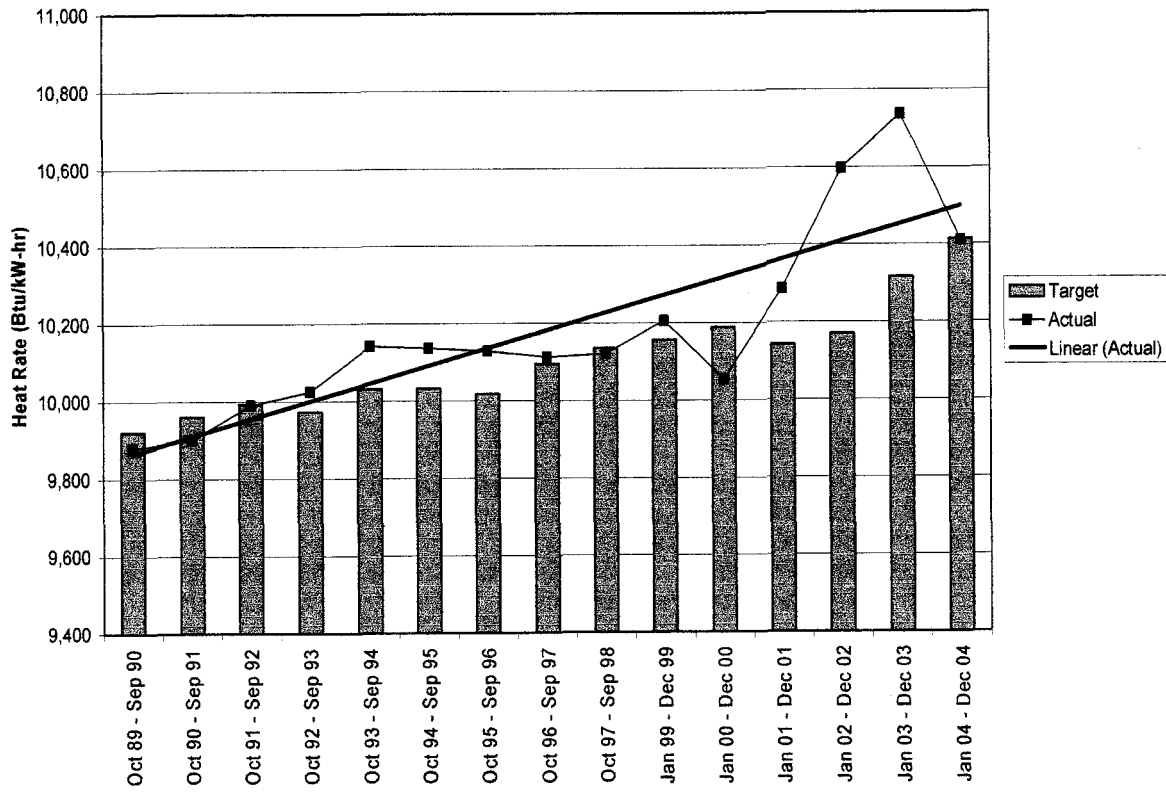


Exhibit B

Tampa Electric Company

| Line | Description | Target | | Actual Adjusted | |
|------|--|--------|-----------|-----------------|-----------|
| | | EAFF | Heat Rate | EAFF | Heat Rate |
| | | (1) | (2) | (3) | (4) |
| 1 | Calendar Year 2001 System Wtd. Numbers | 73.11 | 10,143 | 72.46 | 10,287 |
| 2 | Calendar Year 2002 System Wtd. Numbers | 68.47 | 10,170 | 65.27 | 10,597 |
| 3 | Calendar Year 2003 System Wtd. Numbers | 69.26 | 10,316 | 62.24 | 10,737 |
| 4 | Calendar Year 2004 System Wtd. Numbers | 69.83 | 10,413 | 70.86 | 10,411 |
| 5 | Percent Decline in Performance | 4.49% | 2.66% | 2.21% | 1.21% |

Exhibit C

Progress Energy Florida, Inc.

| Line | Description | Actual Adjusted | | Reward or (Penalty) |
|------|--|-----------------|-----------|------------------------|
| | | EAF | Heat Rate | |
| | | (1) | (2) | (3) |
| 1 | Calendar Year 2001 System Wtd. Numbers | 86.68 | 9,494 | \$608,057 |
| 2 | Calendar Year 2002 System Wtd. Numbers | 84.78 | 9,772 | \$2,781,223 |
| 3 | Change in Calendar Year 2002 From 2001 | -1.90 | 278 | na |
| 4 | Percent Decline in Performance | 2.19% | 2.93% | na |

**Exhibit D
Table 10**

Gulf Power Company

| Description | Actual Adjusted | | Reward or Penalty |
|--|-----------------|-----------|----------------------|
| | EAF | Heat Rate | |
| | (1) | (2) | (3) |
| Calendar Year 2001 System Wtd. Numbers | 83.55 | 10,135 | \$625,280 |
| Calendar Year 2002 System Wtd. Numbers | 77.07 | 10,164 | \$441,988 |
| Change in Calendar Year 2002 From 2001 | -6.48 | 30 | na |
| Percent Decline in Performance | 7.76% | 0.30% | na |

| Exhibit E | | | |
|--|------------------------|--------------|--------------|
| Florida Power and Light Company | | | |
| <u>Reward/(Penalty) *</u> | | | |
| Line | Period | Annual | Cumulative |
| | | (1) | (2) |
| 1 | April 1983 - Mar. 1984 | -\$1,698,828 | -\$1,698,828 |
| 2 | April 1984 - Mar. 1985 | -\$3,885,027 | -\$5,583,855 |
| 3 | April 1985 - Mar. 1986 | \$2,844,485 | -\$2,739,370 |
| 4 | April 1986 - Mar. 1987 | \$1,750,177 | -\$989,193 |
| 5 | April 1987 - Mar. 1988 | -\$2,289,937 | -\$3,279,130 |
| 6 | April 1988 - Mar. 1989 | \$827,355 | -\$2,451,775 |
| 7 | April 1989 - Mar. 1990 | -\$1,077,213 | -\$3,528,988 |
| 8 | April 1990 - Mar. 1991 | \$2,087,214 | -\$1,441,774 |
| 9 | April 1991 - Mar. 1992 | \$7,929,821 | \$6,488,047 |
| 10 | April 1992 - Mar. 1993 | \$2,706,587 | \$9,194,634 |
| 11 | April 1993 - Mar. 1994 | \$3,979,812 | \$13,174,446 |
| 12 | April 1994 - Mar. 1995 | \$6,155,318 | \$19,329,764 |
| 13 | April 1995 - Mar. 1996 | \$4,106,191 | \$23,435,955 |
| 14 | Oct. 1996 - Sept. 1997 | \$9,353,960 | \$32,789,915 |
| 15 | Oct. 1997 - Sept. 1999 | \$9,669,694 | \$42,459,609 |
| 16 | Oct. 1998 - Dec. 1998 | \$1,697,372 | \$44,156,981 |
| 17 | Jan. 1999 - Dec. 1999 | \$6,973,751 | \$51,130,732 |
| 18 | Jan. 2000 - Dec. 2000 | \$9,004,713 | \$60,135,445 |
| 19 | Jan. 2001 - Dec. 2001 | \$7,049,431 | \$67,184,876 |
| 20 | Jan. 2002 - Dec. 2002 | \$7,449,429 | \$74,634,305 |
| 21 | Jan. 2003 - Dec. 2003 | \$6,615,282 | \$81,249,587 |
| 22 | Jan. 2004 - Dec. 2004 | \$10,816,748 | \$92,066,335 |

*Data for the period April, 1997 – September, 1997 was unavailable at the time this exhibit was prepared.

Exhibit F

Florida Power and Light Company

| Line | Plant/Unit | 15-Year EAF Trend | 6-Year EAF Trend | 15-Year Heat Rate Trend | 6-Year Heat Rate Trend |
|------|-------------------|-------------------------|------------------------|-------------------------------|------------------------------|
| | | (1) | (2) | (3) | (4) |
| 1 | Cape Canaveral 1 | Improve | Improve | Decline | Improve |
| 2 | Cape Canaveral 2 | Decline | Improve | Decline | Improve |
| 3 | Fort Lauderdale 4 | Decline | Decline | Decline | Decline |
| 4 | Fort Lauderdale 5 | Decline | Decline | Decline | Decline |
| 5 | Fort Myers 2 | Improve | Improve | Improve | Decline |
| 6 | Manatee 1 | Improve | Improve | Decline | Decline |
| 7 | Manatee 2 | Improve | Decline | Decline | Improve |
| 8 | Martin 1 | Improve | Improve | Decline | Decline |
| 9 | Martin 2 | Improve | Decline | Improve | Decline |
| 10 | Martin 3 | Decline | Decline | Improve | Decline |
| 11 | Martin 4 | Decline | Improve | Improve | Improve |
| 12 | Port Everglades 2 | Decline | na | Improve | na |
| 13 | Port Everglades 3 | Improve | Improve | Decline | Decline |
| 14 | Port Everglades 4 | Improve | Decline | Decline | Improve |
| 15 | Putnam 1 | Decline | Decline | Decline | Improve |
| 16 | Putnam 2 | Decline | na | Decline | na |
| 17 | Riviera 3 | Improve | Improve | Decline | Improve |
| 18 | Riviera 4 | Improve | na | Improve | na |
| 19 | Sanford 4 | Decline | Decline | Decline | Decline |
| 20 | Sanford 5 | Decline | Decline | Decline | Improve |
| 21 | Scherer 4 | Decline | Decline | Decline | Improve |
| 22 | St. Lucie 1 | Improve | Improve | Decline | Decline |
| 23 | St. Lucie 2 | Improve | Decline | Decline | Decline |
| 24 | Turkey Point 1 | Improve | Decline | Improve | Improve |
| 25 | Turkey Point 2 | Improve | Decline | Improve | Decline |
| 26 | Turkey Point 3 | Improve | Decline | Decline | Decline |
| 27 | Turkey Point 4 | Improve | Improve | Decline | Improve |