BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Fuel and purchased power cost recovery clause and generating performance incentive factor.
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Docket No. 080001-EI
Filed: June 9, 2008

FIPUG'S MOTION TO DISMISS THE FPL / PEF RATE INCREASE PETITIONS OR TO GRANT ALTERNATIVE RELIEF FOR THE PROTECTION OF CUSTOMERS

MOTION TO DISMISS

The Florida Industrial Power Users Group (FIPUG), by and through its undersigned attorneys moves to dismiss the Petitions for Midcourse Corrections filed by FPL and Progress Energy Florida (PEF) on the grounds that projected fuel cost increases of $76 million for PEF (3.69%) and $280 million for FPL (4.58%) do not meet the criteria for granting a $959,153,146.00 fuel charge increase to be collected in five months. The petitions were not based upon actual current fuel cost increases of more the 10%. The petitions were based on fuel cost changes plus, carryovers from prior years and questionable forecasts of reduced sales.

ALTERNATIVE MOTION TO ABATE AND SCHEDULE A HEARING

In the alternative FIPUG prays that the Commission will at least 1) abate the proceedings until the utilities file sworn testimony in support of their unsworn petitions; 2) set the matter for public hearing; 3) afford customers sufficient time for discovery as provided in the Commission rules; and 4) allow customers to cross examine the utilities' witnesses under oath in order that the public will be afforded minimum due process and receive a fair understanding of the rationale for the disruptive rate increase.

BACKGROUND AND QUESTIONS REQUIRING HEARING

On Friday May 30th, 2008 PEF petitioned the Commission to raise its fuel charges by an additional $213 million. Three days later it filed its April fuel cost report that showed that fuel charges collected through April 30th exceeded out of pocket fuel costs by $34.5 million. PEF seeks to collect the $213 over the last five months of the year . Its petition may not have been filed in a timely manner; it is unsworn and no testimony was filed to support the allegations. It seeks the monumental rate increase without hearing and with inadequate time for reasonable discovery.

The next business day FPL filed a similar set of papers. It seeks $746 million.

How could this happen?

A well intentioned order by the Florida Public Service Commission to prescribe an appropriate method to determine ***"whether actual fuel costs are ten percent greater or less than projected fuel costs"*** [1] has combined with a national policy allowing the value of the dollar to fall, and the highly volatile commodity futures trading market to bring grave potential hardship to Florida electric consumers.

The bizarre result of this combination of forces is illustrated in information extracted from the unsworn petitions of FPL and PEF.

FPL/PEF FUEL COST FILINGS DKTS 070001-EI & 08000-EI

Progress Energy

		Fuel Cost	Percent Change
PEF May 30, 2008 fuel cost projection Sch E-2 line 10		$2,158,990,236	
PEF Nov 2007 Sch E-1 line 27		$2,082,234,008	
	Difference	$76,756,228	3.69%
Fuel Cost for 1000 kwh with prior year true ups and reduced sales line 20 Schedule E-2 5/30/08		$50.50	
Fuel cost per line 34 Schedule E-1 November 2007 reducing rates to reflect $169 million 2007 over collections		$46.04	
	Difference	$4.46	**9.69%**
Current charge for customer using 1000 kwh		$42.78	
New charge for residential customer using 1000 kwh		$ 54.85	**28.21%**

[1] Order No PSC-07-0333-PAA-EI, April 16, 2007

FPL

		Fuel Cost	Percent Change
FPL fuel cost projection Sch E1-B page 2 line A-7 June 3, 2008		$6,394,370,601	
FPL fuel cost projection Sch E-1 line 28 Nov 2007		$6,114,286,037	
	Difference	$280,084,564	4.58%
Lost sales revenue estimate petition paragraph 11		$329,450,601	5.15%
New former year true up petition paragraph 8		$121,036,106	1.89%
Total Change including interest		$746,153,149	**11.67%**
Current charge for customer using 1000 kwh		$52.27	
New charge for residential customer using 1000 kwh		$68.15	**30.38%**

The unintended consequences of Order PSC-07-0333 arose because it brings prior years true-ups into play and clarified that the Commission would consider estimated revenue and estimated costs to the end of the current calendar year rather than actual costs experienced year to date. The order requires the utilities to seek a mid course correction, but allows the utilities to opt out if a mid course correction is not practical. PEF and FPL obviously think it is practical to impose a 28% and 30% increase to cover fuel cost increases of less than 5%. FIPUG doesn't.

UNRESOLVED QUESTIONS

1. **Why didn't hedging protect customers from precipitous rate increases?** In prior fuel docket testimony the utilities have all contended that they hedge fuel costs only to obtain rate stability. Both utilities state that they hedge up to 70% of their volatile fuel costs with their banks years in advance. In 2007 FPL's fuel costs were $400 million greater than the spot price of fuel because it had purchased hedges based upon higher fuel costs in prior years. When prices fell in 2007 FPL had to pay the holders of its fuel price derivatives a premium based upon the prior year's higher prices. Based upon this explanation customers would presume that in 2007 FPL was locking in the lower 2007 prices. This year prices have risen again. If electrical sales fall off there should be a double reward. FPL doesn't have to pay the higher 2008 fuel prices and it can sell the derivatives

supporting those sales at a premium. The benefits are passed through to consumers.

In its petition FPL says:

> "Although FPL is projected to experience a reduction of approximately $278 million in Jurisdictional Total Fuel Costs due to lower fuel consumption that accompanies the projected reduction in MWH sales, this is more than offset by a projected increase of approximately $549 million related to the much higher fuel cost per MWH"

This appears to be disingenuous in light of previous testimony. It is very confusing to consumer advocates expecting to see a double reward from the reduced sales. FIPUG would like to learn more, but there is no witness to ask. Consumers footing the bill are entitled to know why last years hedges didn't result in fuel cost savings this year.

PEF also claims that lost sales adversely impact consumers. FIPUG can't understand why. Consumers are entitled to know why PEF continues to buy electricity from *Shady Hills*[2] at the average fuel cost rate of $122.25/ mwh if sales are falling off. It could have saved $83 million (more than the total projected fuel cost increase) by just cutting back on these purchases.

2. **<u>Did FPL and PEF delay reporting fuel cost increases until after proposed legislatively mandated rate increases were in place?</u>** Order PSC 07-0333 requires prompt notice of the need for a mid course correction. Fuel prices have risen steadily since mid- January. It is grounds for dismissing the petitions if the utilities delayed reporting. FIPUG wonders whether the fuel cost increase report was delayed because FPL and PEF were sponsoring amendments to Florida House Bill 7135 that would legislatively mandate another rate increase to charge for improvements to their transmission systems before the improvements are in use and useful service and an amendment to the law that would permit a 500 after tax basis point increase to their return on equity if they could demonstrate efficiency in their growth rate.

3. **<u>Customers are entitled to a hearing to present testimony about the impact of the unanticipated increase on their operations?</u>** Industrial and Commercial consumers should be given

[2] Late filed schedule E-7 page 2 of 2

the chance to present evidence to show any adverse impact of imposing a 28% rate increase after their budgets for the year are already in place. In the past utilities have supported annual fuel factors and extended pay back for unanticipated fuel cost increases. FIPUG questions a five month payback even before the alleged extraordinary fuel cost shortfall is expected to begin. FIPUG would like to have the opportunity to recommend to the Commission a reasonable payback period if the fuel cost shortfall actually occurs. An extended payback carries interest. Customers bear all the risk. When extended pay backs have not been granted in the past it is because of even greater fuel cost increases are expected the next year. The utilities have presented no evidence in this case to show that an extended payback is not in the public interest. The attached short term May Natural Gas Price Outlook published by EIA indicates that prices will moderate in 2009.

The Commission should be mindful that residential consumers will see a double burden if businesses are in a position to pass the costs along to their customers. Business may fail if they can't pass the costs along.

4. **Is the rate increase designed to conceal the full impact of the nuclear plant increases scheduled to begin January 1, 2009** In September the Commission will hold a hearing to determine the rate increases the legislature has ordered them to grant PEF and FPL to cover the costs of new nuclear plants years before they are in use and useful service. Consumers need to know if the near billion dollar fuel charge increase is going to be on top of those increases or is it designed to fall away on January 1, 2009 to disguise the nuclear increases.

5. **Hedging and annual fuel factors are supposed to provide rate stability, will the late blooming fuel cost increase move the policy in the opposite direction?** The proposed 28% increase to cover an estimated cost increase of less than 5% is inconsistent with the rate stability concept. Heretofore the Commission has spread large increases over several years to provide stability. The present petitions add carryovers from past years to exacerbate this year's cost increases. This flip flop approach is totally alien to the concept of rate stability.

6. **<u>Estimates of future lost sales drive the need for a rate increase above 10% are these estimates credible?</u>** The Commission should receive evidence about whether the fall off in sales this spring was weather related or caused by some other factor that will persist through the rest of the year. There has been no significant increase in price this year. The logical assumption is that the sales loss was weather related. FIPUG would like to know why the utilities project a further fall off in sales this summer and fall. Is it because they anticipate moderate weather this summer? No witness has been offered to deal with this subject

SUMMARY

Under current regulatory philosophy customers already guarantee the utilities against all losses in their actual fuel costs plus interest. There is no reason to exacerbate this burden by making customers pay large sums based upon seriously flawed future cost projections without at least requiring the utilities to prove their cases in public hearings.

WHEREFORE FIPUG respectfully prays that the Commission will summarily deny the petitions for the Billion dollar Rate Increase sought by FPL & PEF.

In the alternative FIPUG demands a hearing on the merits of the petitions.

In the event the Commission approves a midcourse rate increase before granting the hearing, affected parties are entitled to receive under the provisions of the Florida Administrative Procedures Act and the Commission procedural rules. FIPUG respectfully requests that the payback period be extended through calendar year 2009.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing Florida Industrial Power Users Group Pleading has been furnished by electronic Mail and U.S. Mail on the 9th day of June 2008, to the following:

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