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Sent: Monday, September 08, 2008 7:54 AM
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Subject: Nuclear Plant pleading
Attachments: 0898 FIPUG motion for issue consideration.doc

1. John W. McWhirter, Jr., PO Box 3350 ,FI 33601-3350, jmcwhirter@mac-law.com is the person responsible for this electronic filing;
2. The filing is to be made in Docket 080009-EI, In re: Nuclear Plant Cost Recovery
3. The filing is made on behalf of the Florida Industrial Power Users Group;
4. The total number of pages is 6; and
5. The attached document is The Florida Industrial Power User Group's Motion for Issue Consideration

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9/8/2008

DOCUMENT NUMBER-DATE

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FPSC-COMMISSION CLERK

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Nuclear cost recovery clause.

DOCKET NO. 080009-EI

FILED September 8, 2008

**THE FLORIDA INDUSTRIAL POWER USERS GROUP'S
MOTION TO RECONSIDER PRE HEARING OFFICER'S EXCLUSION OF FIPUG
ISSUE 1E**

Under the provisions of Rule 25-22.0376 F.A.C. the Florida Industrial Power Users Group (FIPUG) through its undersigned attorney hereby files this motion requesting the Commission to over rule the Prehearing officer's determination to deprive FIPUG of the right to raise a policy issue of great importance to consumers.

In its prehearing statement FIPUG proffered the following policy issue for consideration by the Commission.

"ISSUE 1E: What is the appropriate procedure to reduce and refund NPCR charges to retail customers when a utility sells a portion of a nuclear unit to a municipality or another investor owned utility?"

The parties were authorized to submit briefs on whether the Commission should be allowed to consider this issue. FPL stated that it did not object. FIPUG provided its rationale for inclusion. PEF argued that the issue is premature. The other parties filed no briefs on the subject, but supported FIPUG's position at the prehearing conference. The prehearing officer determined that the full Commission would not be allowed to consider the subject in this proceeding at this time. The draft prehearing order circulated September 5th excluded the issue.

To put the issue into focus, FIPUG requests the Commission to exercise the authority granted by § 90.202 *Florida Statutes* to take administrative notice of schedule 7.1 of the ten Year Site plan filed by PEF in Docket 080000 on April 1, 2008 and a news paper article from the *Jacksonville Times Union* dated July 7, 2008 attached as EXHIBITS 1 & 2 to this pleading.

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FPSC-COMMISSION OF 5/8/08

EXHIBIT 1, the extract from PEF's 10 year site plan, shows that when Levy 1 & 2 come on line in 2017 PEF will have a reserve margin of 33%. This is far greater than any reserve margin that the Commission has ever required consumers to support for a generating plant that is in commercial operation. The consumer abuse of this potential result is exacerbated even further by the effect of § 366.093 *Florida Statutes* which requires consumers to bear all the risk of nuclear plants even before they come into operation. By this law 2009 customers will begin to pay for a plant that is 57% greater than they need.

The Commission obviously granted PEF's certificate of need based on a statewide need for capacity and fuel diversity rather than the need of the customers in the service area of PEF.

Federal law requires investor owned utilities constructing nuclear plants to sell participation in the generating facility to municipal utilities. On information and belief Florida Cities own from 10 to 12% of existing nuclear plants operated by both FPL and PEF.

EXHIBIT 2 shows that JEA is in the final stages of acquiring out of state nuclear generation that could easily be offered by FPL or PEF without further restricting the interstate transmission tie to Georgia. PEF projects that Levy 1 will cost \$7,425,000 a megawatt to build. Levy 2 will cost \$5,155,000 per megawatt. The average cost will be \$6,290,000. JEA plans to buy 206 megawatts in Georgia. FIPUG contends that an important policy decision timely made could save PEF's customers the carrying costs on \$1.3 billion on the JEA need alone. FMPA and TECo have announced similar interests.

FIPUG believes that postponing the policy consideration about what to do with respect to PEF's probable excess capacity should be addressed at the outset of the nuclear plant cost recovery process rather than at some future time, when and if the utilities elect to sell their excess capacity or municipalities compel the sale by law. It is irrational to reward PEF profits on excess nuclear capacity when the capacity is sorely needed elsewhere.

The issue was initially raised in PEF's initial uprate dockets 070052-EI and 70698-EI.

PEF stated that it would actively pursue such sales and report back. To the knowledge of the undersigned no such reports have been filed in the public domain.

A similar situation arose in DOCKET NO 850050-EI, DOCKET, NO 850246-EI; ORDER NO. 15451 when TECo built a generating plant that exceeded the needs of its current customers. The Commission afforded customers rate increase protection, by giving them credit for off system sales. The Commission determined:

“We also believe that the mechanism we have established for treating future off-system sales of TECO's generating capacity will meet the laudable objectives of FIPUG's proposal while avoiding its inherent pitfalls.

...

As discussed at the beginning of this order, TECO has entered into a contract with FPL whereby the latter will purchase 70% of the capacity of BB4 from April 1, 1985 through December 31, 1985; 50% in 1986; and 25% in 1987. TECO has included the full revenue requirement of BB4 in its request for increased rates, but, pursuant to its proposed Big Bend Power Sales Credit Clause, has requested that we treat the contract revenues from FPL as a credit on its customer's bills, rather than include them in base revenues. For the reasons stated below, we have decided to disapprove the sales credit approach and, instead, include in base revenues the \$55,222,000 of BB4 sales to FPL projected for 1986.”

In light of the extraordinary principles governing this case which portend large retail rate increases before the utility plant is in use and useful service, the Commission would do well to ameliorate the impact of these rates using the 1985 precedent by giving retail customers credit for probable sales to non retail customers.

Respectfully submitted,

/s/ John W. McWhirter, Jr.

John W. McWhirter, Jr

EXHIBIT 1

PROGRESS ENERGY FLORIDA

SCHEDULE 7.1

FORECAST OF CAPACITY, DEMAND AND SCHEDULED MAINTENANCE

AT TIME OF SUMMER PEAK

(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)	(10)	(11)	(12)
YEAR ^c	TOTAL ^a	FIRM ^b	FIRM		TOTAL	SYSTEM FIRM					
	INSTALLED	CAPACITY	CAPACITY		CAPACITY	SUMMER PEAK	RESERVE MARGIN		SCHEDULED	RESERVE MAI	
	CAPACITY	IMPORT	EXPORT	OF	AVAILABLE	DEMAND	BEFORE MAINTENANCE	% OF PEAK	MAINTENANCE	AFTER MAINTENANCE	% OF
	MW	MW	MW	MW	MW	MW	MW	% OF PEAK	MW	MW	% OF
2008	9,160	2,087	0	173	11,420	9,424	1,996	21%	0	1,996	2
2009	9,839	1,467	0	173	11,499	9,451	2,048	22%	0	2,048	2
2010	9,890	1,592	0	173	11,655	9,689	1,966	20%	0	1,966	2
2011	9,900	1,680	0	323	11,903	9,873	2,030	21%	0	2,030	2
2012	10,035	1,989	0	439	12,463	10,195	2,268	22%	0	2,268	2
2013	11,065	1,679	0	439	13,383	10,393	2,990	29%	0	2,990	2
2014	11,065	1,748	0	439	13,252	10,568	2,684	25%	0	2,684	2
2015	11,065	1,748	0	439	13,252	10,776	2,476	23%	0	2,476	2
2016	11,961	1,336	0	439	13,736	10,961	2,775	25%	0	2,775	2
2017	13,053	1,336	0	439	14,828	11,150	3,678	33%	0	3,678	3

Notes:

a. Total Installed Capacity does not include the 143 MW to Southern Company from Intercession City, P11.

b. FIRM Capacity Import includes Cogeneration, Utility and Independent Power Producers, and Street Trolley Purchase Contracts.

c. Progress Energy is pursuing summer seasonal purchases of approximately 250 MW in 2008. The details not yet summarized as of the time of the Ten-Year Site Plan filing. Since the purchases expected to be made during capacity, no energy impact has been included in this plan at this time.

EXHIBIT 2

Nuclear power on the way at JEA

By DAVID HUNT
The Times-Union
July 7, 2008

JEA is finalizing a contract that would blend 206 megawatts of nuclear energy - enough energy to light up about 20,000 homes - into the region's power portfolio.

The energy, which will be critical as the region grows, will be purchased from a nuclear plant in Eastern Georgia and make up about 5 percent of the utility's energy mix.

JEA's board of directors decided earlier this year that nuclear energy should make up about 10 percent of its power. The move was in response to a changing political climate at the state and federal levels calling for lower carbon emissions.

The 20-year contract with the Municipal Electric Authority of Georgia is expected to start in 2016, after Plant Vogtle is expanded. The plant is about 30 miles south of Augusta.

Randy Boswell, JEA's vice president for corporate data, said the deal is done and he's awaiting the final paperwork. He said the city-owned utility likely will pay about \$80 for every 1,000 kilowatt-hours it needs from the plant. The cost would add up to millions of dollars annually, he said.

"That's in 2016 dollars. It would be the equivalent of about \$50 today," Boswell said. "That's a big number, but based on where we are with coal and gas, that's competitive."

Using natural gas to generate 1,000 kilowatt-hours generally costs from \$90 to \$100, he said, which cuts into revenue potential. Consumers had been paying \$95.93 for the same amount of energy, but this month will begin paying \$110.93. JEA raised the rate to offset a \$61 million deficit as the cost of fuel skyrocketed in recent months.

Fuel costs and pollution concerns thrust into question how many nuclear reactors could be built in the United States in coming years. Boswell said it's unclear at this point how nuclear energy will affect JEA customer bills.

While the plants cost billions to build, they generally are cheaper to run than coal and natural gas plants, Boswell said. Another plus is that they don't emit the carbon dioxide that more-widely-used fossil fuels do. That could be a key step in curbing future utility costs as federal legislators continue to debate whether businesses should pay for the pollution they create.

An additional factor: Gov. Charlie Crist challenged the state's utilities last year to reduce coal in their energy diet. The move crushed plans to build new coal plants, including one for JEA.

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CERTIFICATE OF SERVICE

I **HEREBY CERTIFY** that a true and correct copy of the foregoing the Florida Industrial Power Users Group's Prehearing Statement has been furnished by e-mail the 8th day of September 2008, to the following:

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