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Subject: Electronic Filing - Dkt #080001 / Joint Memo in Opposition to FIPUG Issue
Attachments: Joint Memorandum in Opposition to FIPUG Issue v2.doc; Joint Memorandum in Opposition to FIPUG Issue v2.pdf

Electronic Filing

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b. Docket No. 080001 - EI
In re: Fuel and Purchased Power Cost Recovery Clause and Generating Performance Incentive Factor

c. The document is being filed on behalf of Florida Power & Light Company, Progress Energy Florida,Inc. and Tampa Electric Company

d. There are a total of 5 pages

e. The document attached for electronic filing is a Joint Memorandum in Opposition to FIPUG Issue

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BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Fuel and Purchased Power Cost Recovery Clause with Generating Performance Incentive Factor.	))))	DOCKET NO. 080001-EI FILED: October 15, 2008

JOINT MEMORANDUM IN OPPOSITION TO FIPUG ISSUE

Florida Power & Light Company ("FPL"), Progress Energy Florida, Inc. ("PEF") and Tampa Electric Company ("TECO"), for the reasons set forth below, respectfully request that the Commission deny FIPUG's request to include the following issue for resolution at hearing in the 2008 fuel adjustment docket: "Does the fuel charge proposed by FPL/PEF/TECO contain items that do not change with the price of fuel, if so what is the amount included in the proposed fuel charge to cover these costs?"

On September 30, 2008, the Commission Staff conducted a meeting with the parties to discuss the tentative list of issues for determination by the Commission in this docket. During that meeting, FIPUG proposed the above issue for inclusion. FPL, PEF and TECO expressed their objections to inclusion of this issue, both at the issue identification meeting and thereafter. Notwithstanding those objections, FIPUG has stated its intention to pursue inclusion of the issue for determination at hearing. On October 7, 2008, the Commission issued Order No. PSC-08-0664-PCO-EI, which encouraged the parties "to file a memorandum setting forth the rationale for the inclusion, exclusion, or modification of" FIPUG's issue. This memorandum is being filed jointly by FPL, PEF and TECO in response to Order No. PSC-08-0664-PCO-EI.

FPL, PEF and TECO oppose inclusion of FIPUG's issue because there has not been – and cannot be – an adequate opportunity to develop a record concerning it at this point in the 2008 fuel adjustment proceedings. The issue was not addressed in any of the IOUs' direct testimony, because FIPUG gave no indication until September 30 that it intended to raise the issue. Neither FIPUG nor any other intervenor has addressed the proposed issue in intervenor testimony and, as a result, there has been no rebuttal testimony addressing it. Finally, even though counsel for FIPUG asserted to the parties on September 30 that he became concerned about IOUs recovering certain types of non-volatile costs via the fuel adjustment clause in connection with his review of FPL's and PEF's mid-course correction filings, it has now been about four months since those filings but FIPUG never served any written discovery with respect to that issue.[1] It appears that FIPUG's only attempt to develop evidence on this issue will be last-minute depositions of IOU witnesses in this docket, which FPL, PEF and TECO have agreed to accommodate.

Moreover, no purpose would be served by including FIPUG's proposed issue in this proceeding. The issue is purely factual, asking each IOU to identify whether it recovers through the fuel adjustment clause "items that do not change with the cost of fuel" and then, if so, to state the amount of such items in the IOU's projected fuel charges. There is no existing Commission policy that predicates recovery of costs through the fuel adjustment clause on the fact that the costs "change with the cost of fuel," so this factual information could not possibly be a basis for Commission action in this docket. In short, nothing would be accomplished by including these purely factual questions as a formal issue in this proceeding. If FIPUG truly wants to devote time and resources to this issue and the associated policy issue of what types of costs are properly recoverable through the fuel adjustment clause, it should begin pursuing those issues early in next year's fuel docket and address those issues through prefiled testimony and

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[1] FIPUG's concern over the mid-course corrections being substantially a result of having to spread fixed costs over a smaller base of sales is misplaced. FIPUG expressed that concern in its opposition to FPL's mid-course correction, prompting the Commission Staff to evaluate the contributing causes to the mid-course correction. In Order No. PSC-08-0494-PCO-EI, dated August 5, 2008, at page 10, the Commission rejected this notion in the course of approving FPL's mid-course correction, observing that "[o]verall, it appears that the primary cause for FPL's projected under-recovery is that natural gas and fuel oil prices are higher than originally projected."

appropriate procedures, rather than waiting until a month before hearing without any regard to the proper procedures as it has done this year.

Beyond these procedural concerns, FPL, PEF and TECO also do not believe that, as framed, FIPUG's proposed issue makes a meaningful distinction as to what types of costs are properly recoverable through the fuel adjustment clause. The Commission's established policy, as stated in Order No. 14546, issued on July 8, 1985 in Docket No. 850001-EI-B, is that "[p]rudently incurred fossil fuel-related expenses which are subject to volatile changes should be recovered through an electric utility's fuel adjustment clause. The volatility of fossil fuel-related costs may be due to a number of factors including, but not necessarily limited, to: price, quantity, number of deliveries and distance." FIPUG's issue effectively addresses only one of those volatility dimensions --price -- whereas fuel-related costs can clearly be volatile for several other, equally legitimate reasons. Addressing FIPUG's issue as worded would lead to an artificial divide between costs that "change with the cost of fuel" and those that do not, even though many types of costs in the latter category are volatile, fuel-related costs of the sort that should be recovered through the fuel adjustment clause. To illustrate, FPL properly recovers through the fuel adjustment clause a charge of one mill per kWh charge on power generated by its nuclear units that the U.S. Department of Energy ("DOE") imposes to pay for spent fuel disposal, because the level of the payment varies substantially from year to year as the level of nuclear generation within a calendar year goes up or down.[2] However, while the annual payments to DOE are clearly volatile and relate to the consumption of fuel to serve customers' energy requirements, the payments are completely independent of the price of fuel and hence would

[2] Although nuclear units are base loaded and run whenever they are available, differences from year to year in the number and duration of both planned and unplanned outages for a nuclear fleet affects the total nuclear generation within a given calendar year.

apparently not qualify for fuel adjustment clause recovery according to the distinction that FIPUG seeks to draw.

WHEREFORE, FPL, PEF and TECO oppose inclusion of FIPUG's proposed issue for determination in this docket and respectfully request that the Commission deny FIPUG's request to include that issue.

Respectfully submitted,

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CERTIFICATE OF SERVICE
DOCKET #080001

I, THE UNDERSIGNED COUNSEL, HEREBY CERTIFY that copies of the foregoing Joint Memorandum in Opposition to FIPUG Issue has been served electronically to the parties listed below, this 15th day October, 2008.

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