

**Ruth Nettles**

090001-EI

**From:** John W. McWhirter [johnmac@tampabay.rr.com]  
**Sent:** Friday, December 11, 2009 11:00 AM  
**To:** Filings@psc.state.fl.us  
**Cc:** Capt Al Jungels; Capt Shayla McNeill; Cecilia Bradley; J R Kelly ; James Beasley, Esq.; Jeffrey Stone, Esq.; John Burnett ; John Butler Esq.; John LaVia, III, Esq.; Jon C Moyle Jr ; Kaufman, Vicki ; Lee Willis, Esq.; Lisa Bennett; Natalie Smith; Norman H. Horton; Patty Christensen, Esq.; Paula K. Brown ; Charles Rehwinkel; Russell Badders, Esq.; Schef Wright; Susan D. Ritenour (Gulf Power); Wade Litchfield, Esq.  
**Subject:** 090001-EI Requested refund brief.  
**Attachments:** 091211 FIPUG Exhibit 2.pdf; 0912112 FIPUG refund input.doc; 091212 FIPUG Exhibit 1.pdf

1. John W. McWhirter, Jr., PO Box 3350 ,FI 33601-3350, [jmcwhirter@mac-law.com](mailto:jmcwhirter@mac-law.com) is the person responsible for this electronic filing;
2. The filing is to be made in Docket 090001-EI, In re: Fuel cost recovery. The filing is made on behalf of the Florida Industrial Power Users Group;
3. The total number of pages is 6, including attachments and
4. The attached document is The Florida Industrial Power User Group's input in calculating FPL refund.

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**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. 090001-EI  
Filed: December 11, 2009

**FLORIDA INDUSTRIAL POWER USERS GROUP (FIPUG's) REQUESTED INPUT INTO  
METHOD FOR CALCULATING FPL REFUND**

**STATEMENT OF THE CASE**

In compliance with ORDER PSC-09-0795-FOF-EI, Docket No. 090001-EI, and staff's December 10<sup>th</sup> request for input from parties as to the method of calculating the refund ordered FIPUG files this pleading.

**STATEMENT OF FACTS**

On June 3, 2008 FPL filed a petition to increase its fuel charge by \$746.2 million based on new forecasts of fuel prices and declining sales. The Commission granted the petition, but by Order No. PSC-08-0494-PCO-EI directed that the increase be collected over 17 months with interest rather than the 5 month period FPL sought. According to the pleadings and testimony in the current fuel docket in 2008 FPL encountered a \$79,321,012 fuel cost under recovery. In 2009 FPL estimates that it will collect \$444,164,222 more from customers than its actual fuel cost for the year leaving a net amount over collected from customers for the two year period of \$364,321,012.

The Commission ordered that the entire sum be refunded with interest in January 2009. On December 11<sup>th</sup> FPL advised Commission staff that it proposed to make the refund using the methodology specified in Order No PSC-09-0024-FOF-EI. The same day staff requested a brief from parties addressing three issues:

"It would be helpful in preparing the information for the [staff] recommendation to know:  
[1] the costs to FPL of determining the amount of consumption per customer for 2009;  
[2] whether FPL can identify the amount of total refund per customer class; and

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[3] whether FPL could use a formula to establish a band around customer refunds so that each customer would get at least the minimum amount of refund but no more than a specified maximum amount of refund per customer.”

#### FIPUG RESPONSE TO STAFF REQUEST FOR INPUT

1.

#### The costs to FPL of determining the amount of consumption per customer for 2009

It would be improper to award FPL any cost recovery for determining consumption at this time. FPL has not filed a motion to tax such costs, there is no information on the subject in the record and the other parties have not had an opportunity to review or question FPL on the matter. Due Process should not be overlooked.

2.

#### Whether FPL can identify the amount of total refund per customer class

There is adequate information in the record of this docket and Docket 080001-EI to determine 2009 customer consumption. FIPUG Attachment 1 attached to this brief is a document filed by FPL witness, Kory Dubin, on October 15, 2008. It shows the estimated consumption percentage at the generator for each customer class. FIPUG Attachment 2 to this brief is FPL's comparison of estimated to actual sales for the year through October 2009 filed in this docket on November 20, 2009. It shows that 2009 sales are within 1% of the 2009 estimate. FIPUG concludes that the FPL 2009 estimates are adequate for determining the refund due each class. Using this method FPL's largest two classes, the residential and small business classes will receive 76.09% of the refund (\$276,911,764). The balance will be distributed to the remaining customer classes in accordance with Ms. Dubin's calculations for the 2009 calendar year.

3.

Whether FPL could use a formula to establish a band around customer refunds so that each customer would get at least the minimum amount of refund but no more than a specified maximum amount of refund per customer

Presumably FPL could use such a formula, but in relatively small customer classes where there is a wide disparity in consumption between customers within the class, it would be inequitable to establish minimum and maximum refund entitlements. Doing so without giving parties an opportunity to be heard would be a flawed procedure lacking due process. The incident delay would defeat the purpose of the one time refund and increase interest costs.

For a refund to pass constitutional muster it should be designed to enable customers to recover the excess payments they have made. Giving some customers less than they overpaid for the benefit of others is at best a tax which the Commission doesn't have authority to impose or at worst a confiscatory action which is prohibited by law.

### CONCLUSION

Allow FPL to make the refund in accordance with Order No. PSC-09-0024-FOF-EI in January 2010 as it proposes to do.

Respectfully submitted  
s/ *John W McWhirter, Jr.*  
Attorney for FIPUG

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing pleading was furnished to the following, by electronic mail, on this 11th day of December, 2009:

<p>Lisa C. Bennett Senior Attorney                  FLORIDA PUBLIC SERVICE COMMISSION                  Gerald L. Gunter Building                  2540 Shumard Oak Boulevard                  Tallahassee, FL 323</p>	<p>Paula K. Brown                  Tampa Electric Company                  P. O. Box 111                  Tampa, Florida 33601-0111</p>
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