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 November 10, 2008

THE FLORIDA INDUSTRIAL POWER USERS GROUP'S ARGUMENT, PROPOSED FINDINGS OF FACT AND ORDER

Under the provisions of §120.57(1)(b) *Florida Statutes* and rule 28-106.215 F.A.C. the Florida Industrial Power Users Group files post hearing findings of fact and proposed order.

PRELIMINARY STATEMENT

The phrase 1000 kWh is frequently used in rate making because it is an easy reference tool, but it can be very misleading. 1000 kWh is the same as 1 mWh. On utility filings with the Commission in the fuel docket schedule E-1 is the best device to interpret the costs that each utility is seeking for its estimated fuel expenditures. It has four columns the first identifies a projected cost. The second identifies the projected dollars the utility estimates that it will spend or receive with respect to each cost category. The third column sets out the projected mWh for each category. The fourth column switches references and refers to cents/kWh rather than dollars per mWh. To compare projected sales with proposed charges the fourth column can easily be converted from cents to dollars to match the second and third column. One cent per kWh is the same as ten dollars per mWh.

The Commission filing requirements also require each utility to show the impact of its cost recovery proposals on a residential customer consuming 1000 kWh. This schedule, E10, omits local taxes and franchise fees which normally increase the residential bill by 10 to 14% and the commercial bill by approximately 21%.

In the recent past the Commission has authorized inverted rates for residential customers. With inverted rates customers who consume over 1000 kWh pay a higher price for each kWh of additional consumption. For example FPL proposes to charge its residential customers $62.72 for the first 1000 kWh they consume and $72.72 for consumption over that amount. In this brief when FIPUG measures the proposed rates and the proposed rate increases it uses the change in dollars because this is a better reference for the impact of the proposal than the impact on a customer consuming exactly 1000 kWh who receives a rate subsidy. In this brief FIPUG includes all guaranteed cost recovery items, not just the publically reported fuel increase portion. The rate increases referred to in this brief do not address the additional increases resulting from the imposition of local taxes on the customers bill.

STATEMENT OF THE CASE

Docket 080001-EI is one of five separate dockets set for a combined three day hearing. At the hearing five investor owned power companies requested guaranteed cost recovery for most of the money they plan to spend in 2009. On the first day of the hearings a Commission bench ruling granted the request of all five investor owned power companies for the recovery of conservation and proposed environmental costs, including all of FPL's costs attributable to its proposed 110 MW solar array authorized by the 2008 legislature[1]. The increase for FPL was $87.9 million. Progress Energy (PEF) received a $171.2 million increase and Tampa Electric Company (TECo) is now allowed to increase its conservation and environmental charges by $51.5 million although the TECo's increase is comparatively small it represents a 150% increase for its conservation and a 114% increase for environmental costs.

The second day and most of the third day of hearings was spent exploring a malicious tort at FPL's nuclear plant that cost customers $6.1 million in additional fuel costs.

On the third day of hearings the Commission granted the full fuel and capacity

[1] §366.92(4) *Florida Statutes*

guaranteed cost recovery requests for Gulf and FPUC. It postponed a final decision on the important policy issue of whether FPL or its customers should bear the risk of loss when one of FPL's workers willfully caused fuel costs to increase $6.1 million. This act caused FPL's customers bills to increase $ 0.06 for each 1000 kWh purchased last year.

The Commission was set to vote upon the proposed $2.4 billion of the $2.9 billion increase requested by the three power companies when FIPUG raised a point of order. FIPUG asserted its right under the state's Administrative Procedures Act to file this pleading dealing with facts and to propose a final order on the fuel and capacity increases sought. The Commission granted FIPUG's request, but suggested that the pleading be filed in two working days. This pleading has been transmitted to FIPUG participants, but the time constraints foreclose the opportunity for their input.

STATEMENT OF FACTS

In cost recovery matters petitions, prefiled testimony and cost projections are filed in September. The petitions ask the Commission to approve rates to be charged in 2009 to (1) purchase and handle fuel, (2) engage in conservation programs, (3) invest in environmental compliance programs, (4) make capacity payments to other electric suppliers and (5) receive a reward or penalty for the efficiency of their proposed operations during the forthcoming year. In this year's proceeding newly enacted § 366.093 Florida Statutes allows the two power companies planning to construct nuclear generating plants to charge customers for major portions of those plants years before they will come into service.

FPL, PEF and TECo are seeking rate increases of $2.9 billion in these proceedings. The magnitude of this increase is not publically disclosed nor is the aggregate amount disclosed to the Commission in any specific place. FIPUG has extracted the information from the evidence filed by the power companies in the 5 dockets. It is set out in Exhibit 1 to this pleading.

FPL is seeking a $1.1 billion rate increase through the cost recovery clauses to recover its projected costs plus approval for $269 million base rate increase for two generating plants in FPL's West County Energy Center after the units begin service the second half of 2009. The base rate increase will be the actual carrying costs rather than projected costs.

If these increases are granted the new base rate increase and guaranteed cost recovery will amount to $8.3 billion for FPL. The amount will constitute over 70% of FPL's total operating revenue from the preceding year.

PEF is less than half the size of FPL in terms of annual sales. It is seeking a $1.2 billion rate increase to cover its projected costs. This is a 45% increase in cost recovery items. The proposed cost recovery items will amount to 79% of PEF's total 2007 operating revenue

TECo is less than half the size of PEF. It is seeking a $329 million rate increase to cover its projected costs. If the petition is granted TECo's guaranteed cost recovery items will be $1.5 billion and constitute 70% of its total 2007 operating revenue.

PROPOSED ORDER

Reduce FPL's proposed fuel surcharge by $ 1,033,083,871

Reduce FPL's proposed capacity charge by $ 220,000,000

Reduce PEF's proposed fuel charge by $ 144,046,435

Reduce PEF's proposed capacity charge by $419,000,000

Reduce TECo's proposed fuel charge by $84,703,039.

These actions will reduce the proposed increase from $2.9 billion to $1.0 billion for the three power companies. Recovery will not be denied only postponed if the money is actually spent.

Require TECo to include the purchase of the Union Hall Substation in base rates rather than the fuel charge.

Enable truth in billing by ordering all investor owned utilities to modify the residential customer's bill to restrict the fuel charge on customers' bills to the commodity price of fuel. Require utilities to add another line for the fixed costs in the fuel charge and the other four cost recovery charges which are composed primarily of fixed charges. These charges are unrelated to changes in the price of fuel. They are mischaracterized when billed under the heading "fuel charge."

Open a docket to investigate why energy conservation and energy efficiency by customers causes utility bills to go up.

ARGUMENT SUMMARY

Only two of the Commission designed five cost recovery clauses are authorized by statute. The other three were developed by the Commission with no legislative guidelines except to be fair, just and reasonable.[2] There is no law which permits recovery of projected costs.

FIPUG has not previously objected to reasonable projected cost recovery when it had the affect of stabilizing rates. Stabilized cost helps business and government organizations intelligently plan their own budgets. The current cost recovery proposals are flawed because they are based upon obsolete information. They will create hardship and will destabilize prices.

[2] The legislature did refer to the Commission developed Capacity Recovery Clause in §366.93 Florida Statutes

Argument on issues 5, 26, 27, 29A and 30A

"ISSUE 5: What are the appropriate projected net fuel and purchased power cost recovery amounts to be included in the recovery factor for the period January 2009 through December 2009?

FPL: $7,027,720,757.

PEF: $2,691,843,085

TECO: **…** $1,350,306,418 …

FIPUG: Utility fuel costs were substantially overstated in their petitions as a result of the change in fuel cost between the August and September filings and the present date. The utilities should be directed to forthwith update their fuel cost projections for 2009."

The day the undersigned began drafting this pleading the headline in the Tampa Tribune read **"Strapped for cash, GM may not last through 2009"**. The lead headline in the Wall Street Journal said **"Auto-Industry Crisis, Job Losses Test Obama."** These seemingly unrelated references to the world's economic conditions give rise to the prayer for relief in this pleading. In setting rates based upon future estimated costs the Commission can and should take official notice of the fact that utility customers in Florida are hurting. Insurance costs are soaring, thousands of mortgages are being foreclosed, property taxes based on value before the fall are oppressive, credit card companies are raising interest rates and restricting credit, banks are restricting loans to farmers causing fertilizer prices to fall, jobs are being lost. Under these circumstances should the Commission authorize $2.9 billion in rate increases before the money is spent? The answer is clearly no if the Commission has a way to avoid it without injury to the government protected power companies. Repayment of the actual expenses is guaranteed. There is no harm to power companies. Much is to be gained for the benefit of consumers if the money is not spent. The power companies are made whole if the money is actually spent by them. The power companies will receive reimbursement plus interest at the current commercial paper rate. The commercial paper rate for October was 3.7% compared to 21% and more for the customers' credit card debt.

It cannot be ignored that the requested increase is not based on actual expenses incurred. It is based upon forecasts that we know will be wrong. The evidence in this docket clearly demonstrates that fuel costs are volatile. Cost estimates may be grossly inaccurate. In June 2008 FPL sought and was granted a $746 million increase. PEF sought and was granted a $212 million increase based upon unsworn petitions and conferences with Commission staff in which the principal argument dealt with the companies' projections for the world demand for natural gas and oil and the price for natural gas would increase by $1.26/ MCF for the balance of 2008[3].

Two months later each utility filed their petitions in this proceeding FPL said the cost for gas in 2009 would increase even more to $11.19/ MCF for 2009[4]. PEF said it would be $11.21.[5] PEF amended its request on October 13th based on a new forecast made 28 days after the original filing. It now forecasts 2009 gas to be $9.92 and reduced its proposed fuel charge accordingly. TECo also reduced its natural gas forecast from September's $12.30 per MCF[6] to $9.97 per MCF and revised its proposed fuel charge accordingly. FPL is holding the line and continues to base its $820 million fuel charge increase on the original $11.19/MCF. Since the new estimates were made in September prices have continued to fall dramatically. On October 15, based upon a September 28th revised forecast, FPL acknowledged that its September 2d forecast for fuel expense in 2008 had dropped from $6.2 billion to $5.9 billion[7]. Mr. Yupp talked about current market conditions with Mr. Twomey (TR 518 et seq)[8] Although FPL acknowledged that the 2008 fuel cost forecast had dropped

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[3] Order No. PSC 08-0494-PCO-EI
[4] Schedule E-3 to testimony of Dubin.
[5] Schedule E-3 to testimony of Olivier
[6] Schedule E-3 to testimony of Aldazabel
[7] Schedule E-3 revised Oct 15 by Dubin
[8] Yupp at TR page 215
5 So definitely, the volatility exists in the

around $290 million from the time of its September projection in one month FPL didn't follow the lead of PEF and TECo to revise its 2009 charges.

FIPUG recommends that based upon current market conditions, the falling world demand for fossil fuels and fairness to customers that the Commission make a simple adjustment to the natural gas prices that FPL, PEF and TECo will be authorized to charge that will begin January 1, 2009. Based upon evidence in the record reduce each utility's proposed charge to customers to $9.00 for each MCF of natural gas the utilities forecast that they will buy.

This will reduce FPL's forecasted gas costs by $2.19/ per MCF for natural gas. This reduction times its planned purchase of 473,906,096 MCF will amount to a $ 1,033,083,871 reduction. In issue 5 FPL seeks $7,027,720,757. Based on changing conditions and the evidence in the record FIPUG recommends that the amount be adjusted to $5,994,636,886 including the regulatory assessment.

Using the same approach for PEF will reduce its fuel charge from $2,691,843,085 to $2,547,796,650. This number is derived by reducing the currently estimated cost of natural gas from $9.92 to $9.00. A $0.92 reduction applied to the forecasted purchase amount of 156,572,212 MCF results in a reduction of $144,046,435.

For TECo the reduction will be from $9.97 to $9.00. The result is a price reduction of $58,235,987.

TECo acknowledged that when it adjusted its prices with the October 13th revision it

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market. Prices have trended lower. We don't know what the future holds.

A perfect example of that is, as we sat in October of 2007, as we sat here towards the end of October, beginning of November at the hearing, natural gas for 2008 on average was trading slightly below $8 an MMBtu, which is roughly where we are at now in 2008 for 2009. Did any of us know that by July, we would see natural gas prices of $13 an MMBtu and what fundamentals pushed the market to that level?

only adjusted the fuel cost used in its generating facilities. It didn't have time to make a new forecast with respect to purchased power. FIPUG does not find this to be a daunting task. If the fuel price for its own generation came down by 11.81% from the early September forecast to the October 13th revision the fuel amounts paid for purchased power should fall a corresponding amount irrespective of the suppliers heat rate. Performing the reduction for purchased power reduces this fuel cost by $26,467,052.

The recommended reductions for TECo to bring its filings up to date will be $58,235,987 for its own generation and $26,467,052 for the fuel price in its purchase contracts for a total reduction of $84,703,039. This will reduce the total amount to be collected from customers from $1,350,306,418 to $1,042,161,475.

ISSUE 26: What are the appropriate projected net purchased power capacity cost recovery amounts to be included in the recovery factor for the period January 2009 through December 2009?

On this issue PEF included its request for projected nuclear plant recovery. FPL did not. The FIPUG proposal will be discussed in connection with issues 29A and 30A.

ISSUE 27: What are the appropriate jurisdictional separation factors for capacity revenues and costs to be included in the recovery factor for the period January 2009 through December 2009?

This issue will likewise be discussed under issues 29A and 30A.

Progress Energy Florida

ISSUE 29A: Has PEF included in the capacity cost recovery clause, the nuclear cost recovery amount ordered by the Commission in Docket No. 080009-EI?

PEF: PEF included in the capacity cost recovery clause the nuclear cost recovery amount as filed in Docket 080009-EI on May 1, 2008. The nuclear cost recovery amounts have changed as a result of the Commission vote approving PEF's costs at the October 14, 2008 Agenda Conference in Docket No. 080009-EI. PEF filed revised supplemental testimony and schedules on October 15, 2008 reflecting those changes.

FIPUG: FIPUG agrees that PEF has included the sum determined by the Commission, but does not agree that this amount should be collected exclusively from retail customers. The amount allocable to the retail class should be based upon a 15% reserve margin at the time the plants become commercially operable. The PEF reserve margin will be 33% when its nuclear plants become commercially operable.

STAFF: Pursuant to the Commission's decision in Docket No. 080009-EI, including the stipulations of the parties considered by the Commission, PEF has included in the Capacity Clause, the nuclear cost recovery amount of $418,311,136 as ordered by the Commission.

Florida Power & Light Company

ISSUE 30A: Has FPL included in the capacity cost recovery clause, the nuclear cost recovery amount ordered by the Commission in Docket No. 080009-EI?

FPL: $220,529,243

FIPUG: FIPUG agrees that FPL has included the sum determined by the Commission, but does not agree that this amount should be collected exclusively from retail customers. The amount allocable to the retail class should be based upon a 15% reserve margin at the time the plants become commercially operable. Records filed with the Commission indicate that the FPL reserve margin in 2017 will be 20.1% after cancelling 1311 MW of capacity import contracts.

STAFF: Pursuant to the Commission's decision in Docket No. 080009-EI, including the stipulations of the parties considered by the Commission, FPL has included in the Capacity Clause, the nuclear cost recovery amount of $220,529,243 as ordered by the Commission.

FIPUG will discuss all of these issues together. The principle is the same. FIPUG contends first that under the authorizing statutes customers should not be charged for nuclear plants until the money is spent. No where in Chapter 366 Florida Statues does the legislature authorize utilities to collect money from customers before the utilities make an investment or prudently spend money for their operations. The Commission does it at the behest of the utilities without express legislative authority. Even the newly enacted § 366.93 *Florida Statutes* says.

> (2) Within 6 months after the enactment of this act, the commission shall establish, by rule, alternative cost recovery mechanisms for the recovery of costs **incurred** in the siting, design, licensing, and construction of a nuclear power plant, **. . .**" (emphasis supplied)

English majors will tell you that the word incurred is in the **past tense.** Not the present tense or the future tense. This means that the contribution in aid of construction can't be collected from customers until after the money is spent.

Commission rule 25-6.0423 goes further than the legislative restriction allows, but it also gives the Commission leeway in setting rates to avoid hardship on customers.

> (5) (a) Pre-Construction Costs. A utility is entitled to recover, through the Capacity Cost Recovery Clause, its actual and projected pre-construction costs. The utility may also recover the related carrying charge for those costs not recovered on a projected basis. **Such costs will be recovered within 1 year, unless the Commission approves a longer recovery period. Any party may, however, propose a longer period of recovery, not to exceed 2 years.**

FIPUG further argues that even if the new law that requires customers to pay for a power plant years before it is in use and useful service is constitutional it should not be extended to require the retail customers of FPL and PEF to advance money to the power companies so that they can build power plants to serve a statewide need. In this proceeding FIPUG requested the Commission to take official notice of the ten year site plans filed by PEF and FPL. These site plans show that even before its newly proposed nuclear plants come on line PEF will have a reserve margin of 20.1%. If it doesn't cancel 1311 MW of favorable contracts it will have a 25.2% reserve margin. PEF will have a reserve margin of 33% when the proposed Levy plants go on line in 2017.

Commission rule 25-6.035 establishes a statewide Reserve Margin Requirement of 15%. It is implicit in this rule that a reserve margin of greater than 15% imposed upon the customers of one utility is excessive. When PEF and FPL actually spend the preconstruction money for their nuclear plants. Retail customers should receive no more the 85% of the cost.

THE COMMISSION SHOULD REQUIRE TRUTH IN BILLING

When the petitions are granted the projected costs will appear on customer's bills under two general headings "Fuel charge" and "Non-fuel Charge" or "Energy Charge" or a phrase of similar import. All cost recovery items put on the customer's bill will fall under one of these headings or the other. The “fuel charge” on the customers’ bill is not the fuel charge the power companies publically report when asked about proposed increases. The reported increases only list the fuel cost recovery item and fail to include the other four guaranteed cost recovery items. Customers are lulled into a false sense of understanding by the public reports. Truth in billing will require the power companies to acknowledge all of the increases they are seeking especially now that the extremely expensive nuclear plants and new renewable energy sources are beginning to find their way into customers’ bills.

WHY DON’T BILLS GO DOWN WHEN

ELECTRICTY IS USED MORE EFFICIENTLY?

One of the most disturbing parts of FPL’s $746 million petition for midcourse correction in this docket was the allegation in paragraph 11 of the petition, which read.

> “11. The $329,450,601 (5.4%) decrease in Jurisdictional Fuel Revenues is primarily due to lower than originally projected jurisdictional sales, which are now based on actuals through April 2008 and revised projections for May through December 2008. The current projection is for jurisdictional sales to be 5,697,643,867 kWh, 5.1% lower than the original projection (page 6, line B3).”

The allegation leads to the conclusion that programs to reduce energy consumption are counter productive for rate payers as a whole. If this is the case it must be corrected.

FIPUG believes that the circumstance arises because utilities attempt to cover fixed costs through consumption charges rather than fixed charges. This is good for the power companies when there is sales growth, but it will be disastrous for them and their customers if we are entering an era of sales decline. The situation cries out for considered study. The Commission should initiate such a study by its order in this docket.

Respectfully submitted

/s/ John W. McWhirter, Jr.

John W. McWhirter, Jr.

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 the 10th day of November, 2008:

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FIPUG EXHIBIT 1 RECAP OF FLORIDA PUBLIC SERVICE COMMISSION GUARANTEED COST RECOVERY FACTORS FOR 2009

	A	B	D	F	G	H	J	L	M	N	Q	R
1				**FUEL CHARGE**		**CONSERVATION**	**ENVIRONMENTAL**	**Capacity**	**GPIF**	**Sum of factors**	**GUARANTEED**	**UTILITY OPERATING**
2				**PASS THRU**		**PASS THRU**	**PASS THRU**	**PASS THRU**	**Reward**	**Sum of factors**		**2007**
3		Fuel +Tax &Trueup	Average	ON PEAK	OFF PEAK				**or Penalty**			
4			CR Factor	% &	% &						**COST RECOVERY**	
5			$/ MWH	$/ MWH	$/ MWH	$/ MWH	$/ MWH	$/ MWH	$/ MWH	$/ MWH		
6												
7	**FP & L**	$ 7,027,720,757	66.36	16.00%	84.00%	$ 207,787,770	$ 93,631,540	$798,999,205	$ 5,383,572		$ 8,293,149,067	$11,513,043,447
8	% increase	13.22%				22.41%	113.94%	41.06%	-40.19%		72.03%	**of Total 2007 Revenue**
9											2008 % increase	**15.95%**
10	$ Increase	$ 820,625,833				$ 38,036,875	$ 49,865,913	$232,554,788	-$ 3,617,728		$ 1,397,295,681	**$ Increase**
11		Residential	67.44	75.59	63.95	2.03	0.94	8.16	$ 0.051	$75.131		
12		Primary Distribution	67.50	75.53	63.89	1.80	0.77	3.05/ KW	$ 0.051	$66.511		
13		Transmission	64.69	72.38	61.23	1.47	0.70	3.15 /KW	$ 0.051	$63.014		
14												
15	**Progress**	$ 2,691,843,085	62.90	18.70%	81.30%	$ 137,326,975	$ 137,228,201	$ 748,873,246	$2,167,933		$ 3,717,439,440	$4,692,523,332
16	% increase	40.635%				131.90%	211.01%	56.30%	257.04%		79.22%	**of Total 2007 Revenue**
17											2008 % increase	**44.65%**
18	$ Increase	$777,778,189				$ 78,108,423	$ 93,104,650	$ 269,752,251	$1,560,732		$ 1,220,304,245	**$ Increase**
19		Residential	66.23	92.32	54.18	2.23	3.68	21.66	$0.053	$81.803		
20		Primary Dist	65.57	91.40	53.64	1.80	3.04	15.32	$0.053	$73.853		
21		Transmission	64.91	90.48	53.10	1.66	2.90	13.17	$0.053	$62.325		
22								60.80%				
23	**TECO**	$ 1,350,306,364	6.77	29.87%	70.13%	$ 45,427,582	$45,427,582	$ 93,031,477	($433,685)		$ 1,533,759,321	$2,188,431,601
24	% increase	25.35%				150.05%	114.30%	6.94%	-130.12%		70.08%	**of Total 2007 Revenue**
25											2008 % increase	**27.43%**
26	$ Increase	$ 273,038,559				$ 27,260,401	$24,229,578	$ 6,037,002	($1,873,504)		$ 328,692,036	**$ Increase**
27		Residential	67.66	82.90	61.16	1.06	$2.29	5.80	($0.043)	$70.268		
28		Primary Distrubution	66.98	82.07	60.55	0.78	$2.25	4.25	($0.043)	$67.788		
29		Transmission	66.31	81.24	59.94	0.77	$2.21	0.35	($0.043)	$65.197		
30	Combined inc.	$ 1,871,442,581				$ 143,405,699	$ 167,200,141	$ 508,344,041	-$ 3,930,500	Combined increase	$ 2,946,291,963	
31												
32	Footnotes	1. The $1.4 billion increase attributed to FPL includes the $269 million base rate increase for two new power plants										
33		2. $49,9 million environmental increase for FPL includes estimated costs related to the construction cost of its solar array which will operate 22% of the time										
34		3. In the sum of the factors column for residential customers the fuel charge used is average fuel charge. Residential consumers which consume more than approximately 1500 kwh per month will pay more.										
35		They subsidize the monthly fuel charge of the customers who consume 1000kwh or less. The explanation for the subsidy is that it will encourage residential customer to use less electricity.										
36		4. The sum of factors column for transimission level customers assumes that these large customers opt for time of day pricing										
37		5. When the capacity charge for high voltage level customers is based upon KW billing demand it is not included in sum of factors column. The factor for these customer will be hihger than stated here.										
38		6. This exhibit is prepared by an older person with limited mathematical skills over a very short period of time. Math calculation corrections by utility, commission staff or other affected parties are welcome.										
39												