

**Ruth Nettles**

080407-EG

**From:** Lynette Tenace [ltenace@kagmlaw.com]  
**Sent:** Friday, August 28, 2009 2:42 PM  
**To:** Filings@psc.state.fl.us  
**Cc:** john.burnett@pgnmail.com; jbeasley@ausley.com; srg@beggsllane.com; nhorton@lawfla.com; ryoung@yvlaw.net; garyp@hgslaw.com; wade\_litchfield@fpl.com; suzannebrownless@comcast.net; Jeremy.Susac@eog.myflorida.com; Erik Saylor; Katherine Fleming; Ljacobs50@comcast.net; george@cavros-law.com; sclark@radeylaw.com; cbrowder@ouc.com; jmcwhirter@mac-law.com  
**Subject:** Docket No. 080407, 080408, 080409, 080410, 080411, 080412, 080413-EG  
**Attachments:** FIPUG Post-Hearing Statement of Issues and Positions and Post-Hearing Brief 08.28.09.pdf

In accordance with the electronic filing procedures of the Florida Public Service Commission, the following filing is made:

- a. The name, address, telephone number and email for the person responsible for the filing is:  
  
Vicki Gordon Kaufman  
Jon C. Moyle, Jr.  
Keefe Anchors Gordon & Moyle  
118 North Gadsden Street  
Tallahassee, FL 32301  
(850) 681-3828  
[vkaufman@kagmlaw.com](mailto:vkaufman@kagmlaw.com)  
[jmoyle@kagmlaw.com](mailto:jmoyle@kagmlaw.com)
- b. This filing is made In re: Commission review of numeric conservation goals for  
Florida Power & Light (Docket No. 080407-EG)  
Progress Energy Florida, Inc. (080408-EG)  
Tampa Electric Company (080409-EG)  
Gulf Power Company (080410-EG)  
Florida Public Utilities Company (080411-EG)  
Orlando Utilities Commission (080412-EG)  
JEA (080413-EG)
- c. The document is filed on behalf of Florida Industrial Power Users Group.
- d. The total pages in the document are 15 pages.
- e. The attached document is FIPUG's Post-Hearing Statement of Issues and Positions and Post-Hearing Brief.

Lynette Tenace

**NOTE: New E-Mail Address**  
[ltenace@kagmlaw.com](mailto:ltenace@kagmlaw.com)



Keefe, Anchors, Gordon and Moyle, P.A.  
The Perkins House  
118 N. Gadsden St.  
Tallahassee, FL 32301  
850-681-3828 (Voice)  
850-681-8788 (Fax)

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**BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION**

In re: Commission review of numeric conservation goals (Florida Power & Light Company).	DOCKET NO. 080407-EG
In re: Commission review of numeric conservation goals (Progress Energy Florida, Inc.).	DOCKET NO. 080408-EG
In re: Commission review of numeric conservation goals (Tampa Electric Company).	DOCKET NO. 080409-EG
In re: Commission review of numeric conservation goals (Gulf Power Company).	DOCKET NO. 080410-EG
In re: Commission review of numeric conservation goals (Florida Public Utilities Company).	DOCKET NO. 080411-EG
In re: Commission review of numeric conservation goals (Orlando Utilities Commission).	DOCKET NO. 080412-EG
In re: Commission review of numeric conservation goals (JEA).	DOCKET NO. 080413-EG
	FILED: August 28, 2009

**THE FLORIDA INDUSTRIAL POWER USERS GROUP'S  
POST-HEARING STATEMENT OF ISSUES  
AND POSITIONS AND POST- HEARING BRIEF**

The Florida Industrial Power Users Group (FIPUG),<sup>1</sup> by and through its undersigned counsel, pursuant to Order No. PSC-09-0033-PHO-EI, files this Post-Hearing Statement of Issues and Positions and Post-Hearing Brief.

<sup>1</sup> FIPUG was granted intervenor status in Order No. PSC-09-0500-PCO-EG.

## BASIC POSITION

It is FIPUG's position that cost-effective conservation is an important aspect of every utility's portfolio. Load management programs, such as interruptible programs, play an important role in conservation and should be encouraged. Such programs allow large customers to minimize demand when a utility need resources to maintain service to its firm customers. These programs should be more strongly encouraged. (Tr. 1297).

Interruptible power is a lower quality of service than firm power. The utilities do not include interruptible and other non-firm load in determining the need for additional capacity. Thus, non-firm load has allowed utilities to avoid building more expensive capacity. Further, non-firm load is also capable of providing contingency reserves. The Florida Reliability Coordinating Council (FRCC) defines contingency reserves as resources needed to replace reserve capacity that is no longer available due to sudden forced outages of major generating facilities or the loss of transmission facilities. Using non-firm load as contingency reserves would allow the utility to avoid keeping some generation online, thereby reducing fuel costs and emissions. For these reasons, these types of programs should be encouraged. (Tr. 1303). As PEF's Mr. Masiello testified, PEF's interruptible program has been successful and has provided benefits to PEF's ratepayers. (Tr. 390).

The Commission should also more strongly encourage cogeneration and remove barriers to its efficient use. Cogeneration produces no environmental emissions, consumes no fossil fuel, and requires no additional water consumption. Cogeneration facilities also allow utilities to avoid consuming expensive fossil fuel and thus avoid the resultant emissions. As the testimony in this case showed, there is a wide differential between the prices industrial consumers pay to utilities for energy and the price they receive when they sell cogenerated energy. This wide differential

discourages cogeneration and should be remedied. FIPUG recommends that the Commission conduct an investigation and audit into how the utilities are calculating as-avoided energy costs. (Tr. 1305).

Further, to encourage additional cogeneration and to more fully utilize existing cogeneration, the Commission should permit Multiple Load Management (MLM). MLM should be used to allow customers to more fully utilize existing cogenerated capacity and energy. MLM would allow a customer to centrally manage power and energy usage at multiple locations (owned and controlled by the customer) throughout a utility's service area. It would also allow the use of surplus capacity/energy from cogeneration to displace utility capacity/energy purchases at other locations (*i.e.*, self-service wheeling). The use of MLM would allow cogenerated power to be economically developed and fully utilized and would encourage more widespread and more efficient use of cogeneration. This would help to ensure that viable cogeneration projects are developed. The Commission should conduct an investigation to consider implantation of MLM as described above. (Tr. 1305).

Additionally, if the Commission decides to broaden energy efficiency measures, the utilities should specifically address industrial programs that will increase efficiency, such as the installation of premium efficiency motors. Such programs should be eligible for modest incentives. This would encourage the replacement of less efficient equipment with more efficient equipment thus resulting in demand reduction. (Tr. 1305).

Finally, as the Commission reviews the measures suggested by the parties in this case, it must balance the importance of pursuing conservation programs against their cost and the impact of that cost on ratepayers, especially as all consumers face challenging economic times. The Commission should not overlook rate impact as it evaluates conservation goals in this docket.

The testimony in this case demonstrates that some of the very large goals suggested by NRDC-SACE and GDS would put billions of dollars of excess costs upon ratepayers' backs.

As the Commission reviews the costs of proposed conservation measures, it should also ensure that all utilities calculate the costs and benefits of programs in the same way. The testimony demonstrated that currently this is not the case. There is a difference in the way in which utilities are performing the cost-effectiveness tests and the Commission should investigate this to ensure that the tests are applied correctly and uniformly by all utilities.

### **STATEMENT OF ISSUES AND POSITIONS**

**ISSUE 1:** Did the Company provide an adequate assessment of the full technical potential of all available demand-side and supply-side conservation and efficiency measures, including demand-side renewable energy systems, pursuant to Section 366.82(3), F.S.?

**POSITION:** \*No position.\*

**ISSUE 2:** Did the Company provide an adequate assessment of the achievable potential of all available demand-side and supply-side conservation and efficiency measures, including demand-side renewable energy systems?

**POSITION:** \*No position.\*

**ISSUE 3:** Do the Company's proposed goals adequately reflect the costs and benefits to customers participating in the measure, pursuant to Section 366.82(3)(a), F.S.?

**POSITION:** \*In answering this question, the Commission must balance the goal of conservation with the impact of the cost of conservation programs on rates. The Commission must not overlook rate impact when conservation goals and programs are evaluated.\*

**ISSUE 4:** Do the Company's proposed goals adequately reflect the costs and benefits to the general body of ratepayers as a whole, including utility incentives and participant contributions, pursuant to Section 366.82(3)(b), F.S.?

**POSITION:** \*In answering this question, the Commission must balance the goal of conservation with the impact of the cost of conservation programs on rates. The Commission must not overlook rate impact when conservation goals and programs are evaluated.\*

**ISSUE 5:** Do the Company's proposed goals adequately reflect the costs imposed by state and federal regulations on the emission of greenhouse gases, pursuant to Section 366.82(3)(d), F.S?

**POSITION:** \*No position.\*

**ISSUE 6:** Should the Commission establish incentives to promote both customer-owned and utility-owned energy efficiency and demand-side renewable energy systems?

**POSITION:** \*The answer to this question depends on the type and amount of any such incentives and the incentives impact on rates.\*

**ISSUE 7:** In setting goals, what consideration should the Commission give to the impact on rates?

**POSITION:** \*Electricity is a very large part of industrial customers' variable overhead. The Commission must carefully weigh the encouragement of conservation programs against their rate impact. In these stressful financial times, the Commission must give strong consideration to any rate impact which will result from approval of conservation programs.\*

**DISCUSSION:**

All Florida consumers are facing difficult economic times.<sup>2</sup> Therefore, it is critical that the Commission carefully consider the rate impact of any cost-effectiveness test that it employs and any conservation goals it sets. These actions of the Commission will translate into programs which ratepayers will fund. The importance of pursuing conservation programs must be balanced against their cost and impact on ratepayers. (Tr. 1297). As Mr. Dean testified, rate impact remains an important consideration for the Commission. (Tr. 1244).

As the Commission is well aware, one of its major responsibilities is to set just and reasonable rates.<sup>3</sup> This important legislative directive is not overridden or obscured simply because the Commission is also charged with setting conservation goals. The very statutory section about which there has been much debate in this hearing provides that: "the commission

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<sup>2</sup> As the Commission is aware, it recently granted a two-phase increase for TECO (Docket No. 080317-EI) and will soon consider rate increase requests from FPL and PEF.

<sup>3</sup> See, sections 366.041, 366.05(1), 366.06(1), Florida Statutes.

shall have the flexibility to modify or deny plans or programs that would have an *undue impact on the costs passed on to customers*.<sup>4</sup>

The cost-effectiveness tests and the goals that have been suggested by some of the intervenors in this case seem to ignore the rate impacts of the suggested goals on consumers, who will ultimately pick up the tab. For example, FPL witness Sim testified that GDS' proposed goals were approximately 7 times higher on a summer megawatt basis than those FPL proposed. FPL. (Tr. 164). Dr. Sim further testified that under the GDS' goals, conservation cost recovery clause (CCR) charges would rise tremendously and that FPL's reserve margin would increase to 44%. (Tr. 164-165).

PEF witness Masiello witness testified that GDS' goals are 7 times higher than PEF's. (Tr. 398). Mr. Masiello testified that under the GDS approach, consumers would see a \$6 billion increase over 10 years or \$600 million per year which would pass through the conservation cost recovery clause. (Tr. 398- 99). TECO witness Bryant testified that GDS' goals were 6 to 8 times higher than TECO's. He further testified that GDS' goals would translate into \$893 million over 10 years that ratepayers would incur or approximately \$89 million per year. (Tr. 545). And Gulf's witness Floyd said that GDS' goals were 7 to 8 times higher than Gulf's goals. He further testified that if such goals were approved, there would be a substantial increase in expenditures by Gulf. (Tr. 649). In contrast, NRDC-SACE witness Steinhurst did not evaluate what the rate impact of his recommendations would be. (Tr. 1149).

Further indication of the unreasonableness of GDS' proposed goals is that GDS suggests that ratepayers pay for programs that even GDS acknowledges are not cost-effective. GDS

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<sup>4</sup> Section 366.82(7), Florida Statutes, emphasis added.



recommends that such programs be funded by an additional 10% of each IOU's CCR expenses. (Tr. 1484).

It is beyond dispute that the very large goals suggested by SACE-NRDC and by GDS would visit significant increases upon consumers almost immediately. Thus they should not be approved by the Commission.

**ISSUE 8:** What cost-effectiveness test or tests should the Commission use to set goals, pursuant to Section 366.82, F.S.?

**POSITION:** \*Regardless of which test the Commission approves, it should encourage conservation programs that strike a balance between benefits and costs. Significant weight should be given to the RIM test. In the use of this test, the Commission should ensure that all utilities are conducting the test in the same way.\*

**DISCUSSION:**

Regardless of which cost-effectiveness test the Commission selects, the Commission must ensure that the cost-effectiveness tests are properly and uniformly implemented. (Pollock at 3) Thus, FIPUG recommends that the Commission open a docket to determine how the FEECA utilities calculate the costs they use for RIM values. (Tr. 1305). This investigation should ensure that the calculations are transparent and consistent. (Tr. 1305).

It is FIPUG's view that the Commission should continue to give significant weight to the RIM test (Tr. 1302).<sup>5</sup> But, it is important that all the utilities calculate the RIM (or any other cost-effectiveness test) in the same way. However, it is clear that this is not the case. Each utility is not calculating the RIM or E-RIM test in the same way.

For example, as to (at least) the 4 IOUs, some of the inputs to the cost-effectiveness tests were supplied to the utilities' consultant, Itron, by the utilities, while others were provided by

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<sup>5</sup> See Exhibit No. 77 for Mr. Pollock's illustration of the flaws of the TRC test.

Itron itself. (Tr. 538-539, 646). Thus, there appears to have been no uniformity in what was supplied.

Dr. Sim testified at hearing that while he believed that utilities followed the RIM cost-effectiveness test set out in the Commission's cost-effectiveness manual (Exhibit No. 136), the utilities are "more or less free to figure out how the costs and benefits should be calculated." (Tr. 158). Dr. Sim had not reviewed and did not know if the other utilities were performing the RIM test in the same way as FPL. (Tr. 161).

Further, all the IOUs included emission costs for sulfur dioxide (SO<sub>2</sub>), nitrogen oxide (NO<sub>2</sub>) and carbon dioxide (CO<sub>2</sub>). But these costs vary widely among the four IOUs. For carbon costs per ton in 2015, the costs vary from \$17/ton to \$40/ton. (Exh. 138). Each utility apparently uses a different source for carbon costs. (Tr. 192).

In addition, the RIM cost-effectiveness test contains a lost revenue component. The cost-effectiveness manual states: "the costs also include any decrease in revenues caused by the program" (Exhibit 136 at 11). Lost revenues are not defined in the manual nor does the manual indicate what should be included in that category of the RIM test. (Tr. 541, 645). Therefore, there are no guidelines for addressing this impact. Dr. Sim did not know what analytical approach the other IOUs used for lost revenues. (Tr. 199). Mr. Bryant and Mr. Floyd thought it possible that utilities might be including different items in the lost revenue category. (Tr. 540, 645). As one of the impacts to the cost-effectiveness test, the Commission should ensure that all utilities are using the same approach and similar (if not the same) assumptions.

TECO witness Bryant discussed the fact that there is an "other" category included on the cost side of the E-RIM test for miscellaneous items. While he testified that TECO had not

included anything in that category for some time, he did not know what the other utilities had done regarding this cost category. (Tr. 539-540).

Each IOU witness uniformly testified that he did not know how other utilities had conducted the cost-effectiveness test. (Tr. 392, 540, 645-646). Gulf's Mr. Floyd, for example, testified that all utilities should perform the RIM test in the same way. (Tr. 646).

**ISSUE 9:** What residential summer and winter megawatt (MW) and annual Gigawatt-hour (GWh) goals should be established for the period 2010-2019?

**POSITION:** \*The Commission should set goals that balance the importance of pursuing conservation programs against their cost and the impact of that cost on rates.\*

**ISSUE 10:** What commercial/industrial summer and winter megawatt (MW) and annual Gigawatt hour (GWh) goals should be established for the period 2010-2019?

**POSITION:** \*The Commission should set goals that balance the importance of pursuing conservation programs against their cost and the impact of that cost on rates.\*

**ISSUE 11:** In addition to the MW and GWh goals established in Issues 9 and 10, should the Commission establish separate goals for demand-side renewable energy systems?

**POSITION:** \*No.\*

**ISSUE 12:** In addition to the MW and GWh goals established in Issues 9 and 10, should the Commission establish additional goals for efficiency improvements in generation, transmission, and distribution?

**POSITION:** \*No.\*

**ISSUE 13:** In addition to the MW and GWh goals established in Issues 9 and 10, should the Commission establish separate goals for residential and commercial/industrial customer participation in utility energy audit programs for the period 2010-2019?

**POSITION:** \*No.\*

**ISSUE 14:** What action(s) if any, should the Commission take in this proceeding to encourage the efficient use of cogeneration?

**POSITION:** \*The Commission should remove barriers to the efficient use of cogeneration. Where the customer cannot construct its own transmission lines, the customer

may put cogenerated energy on the grid at the utility's hourly energy cost. This cost is much lower than average fuel cost and does not encourage cogeneration.\*

**DISCUSSION:**

Cogeneration is a process in which industrial waste heat is used to generate energy. (Tr. 271, 540). Cogeneration is an efficient generation method. (Tr. 271, 393, 541). Cogeneration displaces generation that the utility would otherwise have to provide. (Tr. 647).

Thus, the Commission should more strongly encourage cogeneration, particularly for industrial processes that generate substantial waste heat. Many Florida cogeneration facilities use waste heat from industrial processes. This type of cogeneration produces no environmental emissions, consumes no fossil fuel and requires no additional water. These facilities allow the utilities to avoid the purchase and consumption of expensive fossil fuels associated with operating utility-owned generating units and the emissions associated with these units. (Pollock at 8-9). As PEF's Mr. Masiello testified, cogeneration has been beneficial to customers. (Tr. 391).

However, there are numerous barriers to the full utilization of cogeneration. First, in most instances, an industrial customer cannot fully utilize the additional electricity from cogeneration because the cogeneration facility is at a separate location from the customer's other energy-consuming facilities. Second, because such cogenerated power cannot be fully utilized, the customer must either (1) bypass the utility by constructing privately-owned transmission lines (to interconnect the customer's cogeneration and other load consuming facilities) or (2) "put" the excess energy on the grid. In situations where a customer transmission bypass is not a viable option, payment for cogenerated energy is at the utility's hourly avoided energy cost. As a result, viable projects cannot pass the necessary economic hurdles to reach fruition. (Tr. 1304).

Mr. Pollock addressed the first barrier in this testimony. To allow customers to more fully utilize existing cogeneration, the Commission should investigate the implementation of multiple load management (MLM). MLM would allow a customer to centrally manage power and energy usage at multiple locations (owned and controlled by the customer) throughout the utility's service area. This could be expanded to include using surplus capacity/energy from cogeneration to displace utility capacity/energy purchases at other locations (*i.e.*, self-service wheeling). The circumstances under which MLM may be permitted should be expanded to include self-service wheeling so that cogenerated power can be economically developed and fully utilized. Combining MLM and self-service wheeling would encourage more widespread (and more efficient) use of cogeneration. The Commission should open an investigation of the use of MLM. (Tr. 1304-1305). No party provided rebuttal to FIPUG's request for an investigation of MLM. This type of efficient load management should be investigated and implemented by the Commission.<sup>6</sup>

The second barrier to cogeneration is the large differential between what industrial consumers pay the utilities for energy the purchase versus what these same customers receive when they sell cogenerated energy to the utilities. When cogenerations must pay much more to buy energy than to sell it, a disincentive is created. This disincentive was clearly borne out in the testimony in this case.

For example, for 2009 PEF projected its energy cost to be \$73/mwh. (Exhibit 148; Tr. 395). In contrast, the as-available price paid to cogenerators for the end of July 2009 ranged from \$21.37/mwh to \$45.96/mwh (for just the hour of the period shown). (Exhibit No. 149). Clearly, this substantial differential discourages cogeneration.

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<sup>6</sup> As Mr. Dean testified, self-service wheeling can reduce demand and energy. (Tr. 1219)

Similarly, TECO's projected 2009 energy price is \$78.08/mwh. (Exhibit 155). Mr. Bryant testified that the projected cost was substantially more than the as-available price. (Tr. 544). Its as-available prices paid in July 2009 ranged from a low of \$18.00/mwh to a high of \$63.00/mwh (paid in one hour) with average prices being in the \$20s. (Exhibit 4, Document 7, late-filed exhibit No. 3 to Bryant deposition). For Gulf, projected energy costs were \$57.28/mwh (Exhibit 160) compared to lower prices paid to cogeneration for June 2009. (Exhibit 4, Document 9, late-filed exhibit 4 to Floyd depositions.) The substantial differential discourages the full use of cogeneration.<sup>7</sup>

**ISSUE 15:** Since the Commission has no rate-setting authority over OUC and JEA, can the Commission establish goals that put upward pressure on their rates?

**POSITION:** \*No position.\*

**ISSUE 16:** Should this docket be closed?

**POSITION:** \*No. The Commission should conduct an investigation to consider MLM and to audit how the utilities calculate avoided costs in determining cost-effectiveness and in determining the real-time hourly payments for cogenerated energy.\*

**DISCUSSION:**

As discussed in detail in Issues 8 and 14, the Commission should open a docket to consider MLM and to audit how the utilities calculate avoided costs in determining cost-effectiveness and in determining the real-time hourly payments for cogenerated energy.

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<sup>7</sup> It is interesting to note that OUC pays the effective retail rate for excess solar energy sent to the grid. (Tr. 808).

s/ Vicki Gordon Kaufman  
Vicki Gordon Kaufman  
Jon C. Moyle, Jr.  
Anchors Smith Grimsley  
118 North Gadsden Street  
Tallahassee, Florida 32301  
Telephone: (850)681-3828  
Facsimile: (850)681-8788  
[vkaufman@asglegal.com](mailto:vkaufman@asglegal.com)  
[jmoyle@asglegal.com](mailto:jmoyle@asglegal.com)

John W. McWhirter, Jr.  
P.O. Box 3350  
Tampa, Florida 33601-3350  
Telephone: (813) 224-0866  
Facsimile: (813) 221-1854  
[jmcwhirter@mac-law.com](mailto:jmcwhirter@mac-law.com)

Attorneys for Florida Industrial Power Users Group

**CERTIFICATE OF SERVICE**

I **HEREBY CERTIFY** that a true and correct copy of the foregoing The Florida Industrial Power Users Group's Post-Hearing Statement of Issues and Positions has been furnished by electronic mail and U.S. Mail this 28<sup>th</sup> day of August, 2009, to the following:

John T. Burnett and R. Alexander Glenn  
Progress Energy Service Company, LLC  
P.O. Box 14042  
St. Petersburg, FL 33733-4042  
[john.burnett@pgnmail.com](mailto:john.burnett@pgnmail.com)

Gary V. Perko, Esquire  
Hopping, Green & Sams, P.A.  
P.O. Box 6526  
Tallahassee, FL 32314  
[garyp@hgss.com](mailto:garyp@hgss.com)

James D. Beasley, Esquire  
Lee L. Willis, Esquire  
Ausley & McMullen  
P.O. Box 391  
Tallahassee, FL 32302  
[jbeasley@ausley.com](mailto:jbeasley@ausley.com)

Carla Pettus and Wade Litchfield  
Florida Power & Light Company  
700 Universe Blvd.  
Juno Beach, FL 33408  
[wade\\_litchfield@fpl.com](mailto:wade_litchfield@fpl.com)

Jeffrey A. Stone, Esquire  
Beggs & Lane  
P.O. Box 12950  
Pensacola, FL 32591-2950  
[srg@beggslane.com](mailto:srg@beggslane.com)

Suzanne Brownless, Esquire  
Suzanne Brownless, PA  
1975 Buford Blvd.  
Tallahassee, FL 32308  
[suzannebrownless@comcast.net](mailto:suzannebrownless@comcast.net)

Norman H. Horton, Jr., Esquire  
Messer Law Firm  
2618 Centennial Place  
Tallahassee, FL 32308  
[nhorton@lawfla.com](mailto:nhorton@lawfla.com)

Jeremy Susac  
Florida Energy and Climate Commission  
c/o Governor's Energy Office  
600 South Calhoun Street  
Suite 251  
Tallahassee, FL 32399-0001  
[Jeremy.Susac@eog.myflorida.com](mailto:Jeremy.Susac@eog.myflorida.com)

Roy C. Young, Esquire  
Tasha O. Buford, Esquire  
Young vanAssenderp, P.A.  
225 South Adams Street  
Suite 200  
Tallahassee, FL 32301  
[ryoung@yvlaw.net](mailto:ryoung@yvlaw.net)

Erik L. Sayler, Esquire  
Katherine Fleming, Esquire  
Florida Public Service Commission  
2540 Shumard Oak Blvd.  
Tallahassee, FL 32399-0850  
[esayler@psc.state.fl.us](mailto:esayler@psc.state.fl.us)



E. Leon Jacobs, Jr., Esquire  
Williams & Jacobs, LLC  
1720 South Gadsden Street  
MS 14, Suite 201  
Tallahassee, FL 32301  
[Ljacobs50@comcast.net](mailto:Ljacobs50@comcast.net)

George S. Cavros, Esquire, P.A.  
120 East Oakland Park Blvd.  
Suite 10  
Ft. Lauderdale, FL 33334  
[george@cavros-law.com](mailto:george@cavros-law.com)

Susan Clark, Esquire  
Radey Law Firm  
301 South Bronough Street  
Suite 200  
Tallahassee, FL 32301  
[sclark@radeylaw.com](mailto:sclark@radeylaw.com)

Chris Browder  
Orlando Utilities Commission  
P.O. Box 3193  
Orlando, FL 32802-3193  
[cbrowder@ouc.com](mailto:cbrowder@ouc.com)

s/ Vicki Gordon Kaufman  
Vicki Gordon Kaufman