

STATE OF FLORIDA

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Public Service Commission

April 23, 2003

VIA ELECTRONIC FILING

The Honorable Magalie R. Salas
Federal Energy Regulatory Commission
888 First Street, NE
Washington, DC 20426

**Re: Docket No. SC03-1-000, Florida Power Corporation d/b/a Progress Energy
Florida, Inc.**

Dear Ms. Salas:

Forwarded herewith are the Florida Public Service Commission Notice of Intervention and Comments in the above docket.

Sincerely,

/ s /

Harold McLean
General Counsel

/ s /

Cynthia B. Miller, Esquire
Office of Federal and Legislative Liaison

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**UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION**

Florida Power Corporation, dba) Docket No. SC03-1-000
Progress Energy Florida, Inc.)
_____)

**Florida Public Service Commission
Notice of Intervention**

Pursuant to Rule 214(a)(2) of the Federal Energy Regulatory Commission (FERC) Rules of Practice and Procedure, the Florida Public Service Commission (FPSC) hereby files its Notice of Intervention.

COMMUNICATIONS

Pursuant to Rule 203(b)(3) of the Federal Energy Regulatory Commission (FERC) Rules of Practice and Procedure, the following persons are designated for receipt of communications and service on this proceeding:

Cynthia B. Miller, Esquire
Chief, Office of Federal and Legislative Liaison
Division of External Affairs
2540 Shumard Oak Boulevard
Tallahassee, Florida 32399-0850
Telephone: 850/413-6082

Harold McLean, Esquire
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2540 Shumard Oak Boulevard
Tallahassee, Florida 32399-0850
Telephone: 850/413-6076

INTERVENTION

The FPSC is a state public utility commission whose interests are not adequately represented by any other party in the proceeding. The FPSC, pursuant to Chapters 350, 366, and 403, Florida Statutes, is given the jurisdiction to regulate electric utilities within the State of Florida and to exercise the police power of the state for the protection of the public welfare. Section 366.015, Florida Statutes, encourages participation by the FPSC in the proceedings of Federal agencies that affect those utilities over which the FPSC has primary regulatory jurisdiction. The FPSC believes the issues in the docket are of great public importance.

The FPSC has statutory authority over the retail rates of investor-owned electric utilities. The FPSC sets rates for bundled electric service provided by investor-owned utilities in Florida and makes determinations on what costs should be recovered from retail ratepayers through those rates. The FPSC has extensive authority over the planning of an integrated electrical system under Section 366.04(2), Florida Statutes. This section also provides for FPSC authority over territorial disputes between all electric utilities operating within the state. The Florida Legislature enacted Chapter 403, Part II, Florida Statutes, which creates a multi-agency review of power plant siting requests by all utilities -- investor owned and publicly owned. Chapter 403 requires the FPSC to determine the need for power plants greater than 75 megawatts and possessing a steam boiler. This process requires the FPSC take into account the need for electric system reliability, the need for adequate electricity at a reasonable cost, and whether the plant is the most cost effective alternative. The Department of Environmental Protection, along with other state agencies, is responsible for the environmental permitting process. Ultimately, the Governor and Cabinet, acting as the Siting Board,

make the final determination on whether a new power plant is needed and where it is to be located. This process, which has worked remarkably well, ensures that Florida has and will continue to have adequate generating capacity. In addition, the Florida legislature, pursuant to Section 186.801, Florida Statutes, requires utilities to submit to the FPSC ten-year site plans on at least a semi-annual basis. These plans estimate power generating needs and the general location of proposed power plant sites. The FPSC makes a preliminary study of each plan and classifies them as suitable or unsuitable, pursuant to statutory criteria.

Under this statutory scheme, the FPSC has jurisdiction over issues which are embedded in the filing before the FERC, including:

- Progress Energy Florida's current statutory obligation to plan for and serve its retail customer load within the City of Casselberry (the City);
- The use of the state-mandated Ten-Year site plan in planning to serve Progress Energy Florida's retail customers within the City;
- The use of territorial service areas under Florida law;
- Valuation of generation assets;
- Required quality of service; and
- Potential cost shifting among the general body of ratepayers.

These issues are relevant to the responsibilities of the FPSC.

There is a significant concern, as well, that this case may be establishing a precedent regarding stranded costs and regarding the role of court-ordered arbitration to determine stranded cost recovery. As the FERC noted in Order No. 888-A, it is problematic if no regulator is involved

in the stranded cost determination.

We want to emphasize that this intervention is not taking a position on the merits of the arbitration panel's decision with respect to the obligations or rights of the parties resulting from the franchise agreement, nor are we currently taking a position as to the valuation of the distribution system in question.

We recognize that, pursuant to Order 888, the FERC is the primary forum for addressing the recovery of stranded costs by retail-turned-wholesale customers.¹ The FERC had noted that it would give great weight “in our proceedings to a state’s view of what might be recoverable.” Also, the FERC had expressed “concern that there may be circumstances in which customers and/or utilities could attempt through indirect use of open access transmission, to circumvent the ability of any regulatory commission – either this Commission or State Commission to address recovery of stranded costs.” The FERC “reserved the right to address such situations on a case-by-case basis.” Thus, the process used here is an important matter as well.

¹In the FERC Order 888 proceeding, the FPSC had urged that the state Commission be the authority to determine stranded costs. “It is in this scenario that cooperation between the FERC and the state Commission is needed. The FPSC believes that the FERC should defer to the state Commission the determinations of the stranded costs.” (FPSC Comments filed December 6, 1994 in Docket No. RM94-7-000)

WHEREFORE, the FPSC initially asserts that it has direct, material, and substantial interest in the proceedings that cannot be adequately represented by any other party. Accordingly, the FPSC respectfully has timely filed this Notice of Intervention.

Respectfully Submitted,

/ s /

Harold McLean
General Counsel

/ s /

Cynthia B. Miller, Esquire
Office of Federal and Legislative Liaison

DATED: April 23, 2003

**UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION**

Florida Power Corporation, dba) Docket No. SC03-1-000
Progress Energy Florida, Inc.)
_____)

COMMENTS OF THE FLORIDA PUBLIC SERVICE COMMISSION

The Florida Public Service Commission (FPSC) files these comments to: (1) emphasize the jurisdictional concerns in this matter; and (2) urge the FERC to conduct an appropriate proceeding to determine stranded costs, which provides the FPSC with an opportunity to meaningfully participate in the resolution of this issue.

The FPSC is not taking a position on the merits of the filing at this time, yet is concerned that these are matters that fall within the jurisdiction of the FPSC and impact retail ratepayers.

There is a significant concern, as well, that this case may be establishing a precedent regarding stranded costs and regarding the role of court-ordered arbitration to determine stranded cost recovery. As the FERC noted in Order No. 888-A, it is problematic if no regulator is involved in the stranded cost determination.

(1) The matters within the Progress Energy Florida filing impact the FPSC jurisdiction and retail ratepayers.

There are state-jurisdictional issues intertwined in the petition in this docket and in the underlying arbitration, such as:

- Progress Energy Florida's current statutory obligation to plan for and serve its retail customer load within the City of Casselberry (the City);

- The use of the state-mandated Ten-Year site plan in planning to serve Progress Energy Florida's retail customers within the City;
- The use of retail territorial service areas under Florida law;
- Valuation of generation assets;
- Required quality of service; and
- Potential cost shifting among the general body of ratepayers

The FPSC has statutory authority over the retail rates of investor-owned electric utilities. The FPSC sets rates for bundled electric service provided by investor-owned utilities in Florida and makes determinations on what costs should be recovered from retail ratepayers through those rates. The FPSC has extensive authority over the planning of an integrated electrical system under Section 366.04(2), Florida Statutes. This section also provides for FPSC authority over territorial disputes between all electric utilities operating within the state. The Florida Legislature enacted Chapter 403, Part II, Florida Statutes, which creates a multi-agency review of power plant siting requests by all utilities -- investor owned and publicly owned. Chapter 403 requires the FPSC to determine the need for power plants greater than 75 megawatts and possessing a steam boiler. This process requires the FPSC take into account the need for electric system reliability, the need for adequate electricity at a reasonable cost, and whether the plant is the most cost effective alternative. The Department of Environmental Protection, along with other state agencies, is responsible for the environmental permitting process. Ultimately, the Governor and Cabinet, acting as the Siting Board, make the final determination on whether a new power plant is needed and where it is to be located. This process, which has worked remarkably well, ensures that Florida has and will continue to have

adequate generating capacity.

The Florida legislature, pursuant to Section 186.801, Florida Statutes, has required the utilities to submit to the FPSC ten-year site plans on at least a semi-annual basis. These plans estimate power generating needs and the general location of proposed power plant sites. The FPSC makes a preliminary study of each plan and classifies them as suitable or unsuitable, pursuant to statutory criteria.

(2) The FPSC urges FERC to conduct an appropriate proceeding to determine stranded costs and provide the FPSC with an opportunity to meaningfully participate in the resolution of this issue.

This is a matter of great importance, which could have an impact on retail ratepayers. While the FPSC has determined it is inappropriate to comment regarding the franchise agreement, we do have an interest in the stranded cost issue. Florida law provides the FPSC with exclusive jurisdiction over rates, charges, and reliability. This matter, especially if precedent-setting, will impact retail ratepayers. Thus, the FPSC urges the FERC to conduct an appropriate proceeding to determine stranded costs and provide the FPSC with the opportunity to participate. The April 9 notice for the filing gave a mere two weeks opportunity for intervention and comments.

In addition, the stranded cost issue is premature until the City actually makes a commitment to leave the Progress Energy Florida system. If it does materialize, the FPSC would be in a better position to serve as a forum to mitigate the impact. If stranded costs are found to exist by a regulatory body, the FERC could grant deference to a state proceeding or work closely with the State commission. The FPSC is uniquely situated to determine stranded costs given our knowledge

of the generation market in Florida, the assessment of mitigation measures, and the range of the revenue impact on the general body of Progress Energy's ratepayers.

In conclusion, the FPSC provides information to show that this matter is related to our jurisdiction; and to urge that the FERC hold an appropriate proceeding to accommodate the participation of the FPSC and additional filing of comments.

Respectfully Submitted,

/ s /

Harold McLean
General Counsel

/ s /

Cynthia B. Miller, Esquire
Office of Federal and Legislative Liaison

FLORIDA PUBLIC SERVICE COMMISSION
2540 Shumard Oak Boulevard
Tallahassee, Florida 32399-0850

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that the foregoing filing of the Florida Public Service Commission will be sent today by U.S. Mail to the service list in the above listed docket.

/ s /

Cynthia B. Miller, Esquire
Office of Federal & Legislative Liaison

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