

State of Florida



# Public Service Commission

CAPITAL CIRCLE OFFICE CENTER • 2540 SHUMARD OAK BOULEVARD  
TALLAHASSEE, FLORIDA 32399-0850

**-M-E-M-O-R-A-N-D-U-M-**

06 JUL 21 AM 9:47  
RECEIVED FPSC  
COMMISSION  
CLERK

**DATE:** July 21, 2005

**TO:** Director, Division of the Commission Clerk & Administrative Services (Bayó)

**FROM:** Division of Economic Regulation (Wheeler, Kummer) *CK 198*  
Office of the General Counsel (Brown) *MCB MCB*

**RE:** Docket No. 050068-EI – Request for approval of standard form underground conversion contract by Progress Energy Florida, Inc.

**AGENDA:** 08/02/05 – Regular Agenda – Tariff Filing - Interested Persons May Participate

**COMMISSIONERS ASSIGNED:** All Commissioners

**PREHEARING OFFICER:** Administrative

**CRITICAL DATES:** None

**SPECIAL INSTRUCTIONS:** None

**FILE NAME AND LOCATION:** S:\PSC\GCL\WP\050068.RCM.DOC

## Case Background

On January 14, 2005, Progress Energy Florida, Inc. (PEF) filed a petition for approval of a standard form underground conversion agreement to be included in its tariff. PEF intended to use the standard agreement when applicants request that existing overhead electric distribution facilities be relocated underground. The Office of Public Counsel intervened in the Docket on March 9, 2005. On March 21, 2005, the Commission suspended the tariff pending further review. Thereafter, on July 18, 2005, PEF filed its Notice of Voluntary Withdrawal of its petition. This is staff's recommendation that the Commission acknowledge the voluntary withdrawal and close the docket. The Commission has jurisdiction over this matter pursuant to sections 366.03, 366.04, and 366.06, Florida Statutes.

DOCUMENT NUMBER-DATE

06960 JUL 21 05

FPSC-COMMISSION CLERK

**Discussion of Issues**

**ISSUE 1:** Should the Commission acknowledge Progress Energy Florida, Inc.'s Notice of Voluntary Withdrawal of its Request for approval of standard form underground conversion contract?

**RECOMMENDATION:** Yes. (Brown, Wheeler)

**STAFF ANALYSIS:** It is well-settled law that if a case has not yet been presented to the tribunal for a substantive decision a petitioner has an absolute right to a voluntary dismissal or withdrawal. Fears v. Lunsford, 314 So.2d 578, 579 (Fla. 1975). The Commission has not addressed the substance of PEF's petition and therefore, since PEF has filed its voluntary withdrawal, the Commission no longer has jurisdiction to address it. Randle-Eastern Ambulance Service, Inc. v. Vasta, 360 So.2d 68, 69 (Fla. 1978). There are no remaining issues to be addressed. Staff recommends that the Commission acknowledge PEF's voluntary withdrawal.

**ISSUE 2:** Should this docket be closed?

**RECOMMENDATION:** Yes. This docket should be closed upon the issuance of the Commission's Order acknowledging the voluntary withdrawal. (Brown, Wheeler)

**STAFF ANALYSIS:** This docket should be closed upon the issuance of the Commission's Order acknowledging the voluntary withdrawal.