Matilda Sanders

ORIGINAL

From: CHRISTENSEN.PATTY [CHRISTENSEN.PATTY@leg.state.fl.us]

Sent: Monday, November 20, 2006 3:58 PM

To: DAVIS.PHYLLIS; Filings@psc.state.fl.us

Cc: Buck Oven; James Walls; Joe McGlothlin; John Burnett; John McWhirter; Lisa Bennett; Mike Twomey; Paul Lewis; Scheffel Wright; Shaw Stiller

Subject: RE:

Attachments: Motion to Serve and-or Abate (filed verision 2).doc

Please substitute the attached version of the Joint Motion for the previously emailed version.
From,
Phyllis Davis

On behalf of Patricia A. Christensen, Office of Public Counsel
111 W. Madison Street, Room 812
Tallahassee, FL 32399-1400
Email: christensen.patty@leg.state.fl.us
Phone: (850) 488-9330
Fax: (850) 488-4491

1. This filing is to be made in Docket Number: 060642-EI, In re: Petition for determination of need for expansion of Crystal River 3 nuclear power plant, for exemption for Bid rule, recovery through the fuel clause, by Progress Energy Florida, Inc.

2. Attached for filing on behalf of Office of Public Counsel is the Motion To Sever And Abate The Portion Of The Proceeding On PEF's Petition
For Determination Of Need For Expansion Of Crystal River 3 Nuclear Plant Relating To The Manner Of Future Cost Recovery.

3. There are a total of three (10) pages for filing

Phyllis W. Davis

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BEFORE THE PUBLIC SERVICE COMMISSION

In re: Petition for determination of need for expansion of Crystal River 3 nuclear power plant, for exemption for Bid rule, recovery through the fuel clause, by Progress Energy Florida, Inc.

Docket No.: 060642-EI

Filed: November 20, 2006

JOINT MOTION TO SEVER AND ABATE THE PORTION OF THE PROCEEDING ON PEF'S PETITION FOR DETERMINATION OF NEED FOR EXPANSION OF CRYSTAL RIVER 3 NUCLEAR PLANT RELATING TO THE MANNER OF FUTURE COST RECOVERY

The Citizens of the State of Florida (Citizens), Florida Retail Federation, and AARP (Intervenors) hereby file their Joint Motion to Sever and Abate the portion of the instant proceeding that relates to the manner in which the Commission would permit Progress Energy Florida Inc. ("PEF") to recover the costs of its proposal to increase the generating capacity of its Crystal River 3 unit in the event the Power Plant Siting Board authorizes PEF to proceed with its proposal, and as grounds state the following:

1. On September 22, 2006, PEF filed its Petition for Determination of Need for Expansion of an Electrical Power Plant, for Exemption from Rule 25-22.082, F.A.C., and for Cost Recovery though the Fuel Cost Recovery Clause. Progress' Petition requests that the Commission take three separate actions. First, Progress asks the Commission to determine that a need exists for the additional capacity proposed by PEF within the meaning of the Florida Electrical Power Plant Siting Act. Progress proposes to increase the generating capacity of its Crystal River 3 nuclear power plant from 900 MW to 1,080 MW, an increment of approximately 180 MW. Progress' planned increases to its plant are to be done in two phases. The first phase, if approved, will occur during the 2009

refueling outage. This phase includes the steam generator replacement for the Crystal River 3 license extension. The second phase is to occur during the 2011 refueling outage. Progress contends that it is making its request now, because of the need to order the equipment to complete the work scheduled for 2009 and 2011.

Second, Progress requests a waiver of Rule 25-22.082, Florida Administrative Code (the "BID rule").

Finally, Progress requests the Commission to rule that it may recover the costs associated with the nuclear power plant modifications through the Fuel and Purchased Power Cost Recovery Clause.

2. The Siting Act imposes on the Commission extremely expedited time frames within which it must rule on a petition for a determination of need.[1] Section 403.519(4), Florida Statutes, states that "In making its determination on a proposed electrical power plant using nuclear materials as fuel, the commission shall hold a hearing within 90 days after the filing of the petition to determine the need and shall issue an order granting or denying the petition within 135 days after the date of the filing of the petition." In light of the statutory requirements, Intervenors do not object to the expedited treatment of the portion of the Petition related to the determination of the need for the proposed increase in generating capacity. However, while the Commission is required to hold a hearing within 90 days on the need determination portion of the petition, no such requirement attaches to the issue of the manner of future cost recovery. PEF's request for authority to

[1] Pursuant to the Electrical Power Plant Siting Act, if the Commission makes a positive need determination, PEF's proposal moves to proceedings administered by the Department of Environmental Protection and presided over by an administrative law judge, who submits a recommendation to the Florida Cabinet, sitting as the Florida Electrical Power Plant Siting Board.

recover the costs of nuclear generating capacity includes in this instance costs of physically modifying the facility to generate additional steam, transmission system changes, and costs of dealing with the impact of additional heat on environmental discharge limits. PEF's cost recovery request raises extremely significant issues of proper and improper ratemaking techniques that demand full, deliberate, and informed consideration in a proceeding that is not stressed by what would be unnecessary and artificial time pressure. It would be unnecessary, inappropriate, and prejudicial to customers' interests to entertain PEF's request for a ruling on the manner of future cost recovery for any plant improvements now.

PEF's proposal to recover associated costs through the fuel cost recovery clause is plainly inconsistent with the statute under which PEF is proceeding with its petition for a determination of need.

3. The anomalous nature of PEF's request can be seen by a review of the very statute under which PEF is proceeding with its petition. Section 403.519(4)(3), Florida Statutes, contemplates that recovery issues will only be addressed after the petition for need determination has been approved. Section 403.519(e), states:

> **After** a petition for determination of need for a nuclear power plant has been granted, the right of a utility to recover any costs incurred prior to commercial operation, including, but not limited to, costs associated with the siting, design, licensing, or construction of the plant, shall not be subject to challenge unless and only to the extent the commission finds, based on a preponderance of the evidence adduced at a hearing before the commission under s. 120.57, that certain costs were imprudently incurred.

(emphasis added). As noted in the statute, once the Commission determines need for a nuclear power plant, the utility may expend funds to make its improvements with

assurance that those costs are eligible for recovery unless it is determined at a subsequent hearing that those costs were imprudent.[2]

PEF's proposal to lead the Commission even farther from the original purpose of the Fuel Cost Recovery Clause raises significant policy issues.

4. For some time, Intervenors have been concerned that the original purpose of the Fuel Cost Recovery Clause ("Fuel Clause" or "clause") has been obscured, and the clause has been abused by ever-increasing encroachments on the distinction between the proper role of base rates and what should be a limited departure from base rates in the form of a cost recovery clause. To ensure that investments and expenses borne by rates paid by customers are prudent and reasonable, a utility's total revenue needs are addressed in proceedings – commonly known as general rate cases - that review the posture of the utility on an overall basis, so that the full dynamics and potentially offsetting effects of revenues stemming from customer growth, growth in demand, cost savings resulting from efficiencies, the retirement of plant, etc. can be taken into account when reviewing a claim of an individual increased expense or new investment. In such a setting the Commission also considers the business risk to which the utility is exposed and establishes a return that is commensurate with that risk. The return on investment is included in the revenue requirement that is collected through the "base rates."

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[2] Moreover, the statute makes clear that the costs associated with nuclear power plant improvements requiring a need determination proceeding are base rate items. Section 403.519(4)(a)(4), Florida Statute, requires the utilities to include in their need determination petitions "The annualized base revenue requirement for the first 12 months of operation of the nuclear power plant." (Emphasis added.) The statute explicitly contemplates recovery of costs associated with nuclear generating plant through base rates.

5. The Fuel Clause was intended to provide a limited exception to a particularly volatile component of the utility's costs of providing service. Well after the Fuel Clause was put into place, the Commission began allowing utilities to recover the costs of certain programs and projects through the cost recovery clause upon the showing of a nexus between the expense and fuel savings. [3]

6. The Intervenors have watched as the utilities have expanded upon and exploited this rationale over time. If Florida's system of utility regulation has reached the point at which a utility can assert, with a straight face, that a future investment in additional nuclear generating capacity should be recovered through the Fuel Clause, it is time to revisit the wisdom of the departure from the original purpose of the fuel cost recovery clause.[4] It is time for the Commission to recognize that the utilities have a huge incentive to roll as many costs as possible through a cost recovery clause instead of recovering them through base rates—and that incentive is adverse to customers' interests. When a utility pours costs through a cost recovery clause, it avoids proper Commission analysis of the ability of the utility to absorb the costs in revenues generated by base rates without increasing either base rates or the fuel cost recovery factor. In those instances in which the utility could absorb all or some of the costs through existing base rate revenues and continue to earn a fair return on its overall investment in plant, the impact of

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[3] In a need determination, the Commission is required to consider the costs savings of a project (such as fuel savings) in its decision making. See Section 403.519(3), Florida Statutes. The consideration relates to the merits of the petition to determine need, not the issue of recovery through base rates or a cost recovery clause.

[4] Order No. 14546 which defines the costs which should flow through the Fuel Clause states that only "Prudently incurred fossil fuel-related expenses which are subject to volatile changes should be recovered through an electric utility's fuel adjustment clause. . . . All other fossil fuel-related costs should be recovered through base rates." Id. at p. 2. (Emphasis added.)

permitting recovery through an increase in a cost recovery factor would be to require customers to pay more than they should for the service they receive. Further, each time a utility rolls capital investments through a cost recovery clause and through the "true–up" provision of a cost recovery clause, the utility avoids the business risk upon which the design of base rates (and hence the approved revenue requirement) was premised, but adds the full return on investment of the subject capital to the expenses it pours through the clause (i.e. all gain, no risk).

7. The impact of collecting the capital costs associated with the CR3 project through the cost recovery clause would be particularly egregious in this instance, because - unlike the scenarios envisioned by the Commission in past decisions to allow cost recovery through the Fuel Clause - PEF would have the ability, pursuant to normal, accepted regulatory accounting and ratemaking standards, practices, and procedures, to capitalize its early costs and the opportunity to file a base rate request coordinated with the in-service date of the CR3 improvements. Far from rushing to a decision on PEF's request based on an artificial time constraint, Intervenors submit that the Commission should reassess the wisdom of ever-increasing expansions of demands for "clause treatment" in a setting in which the appropriate roles of base rates and cost recovery clauses can be assessed thoroughly and dispassionately.

8. PEF's clause-based recovery request raises issues that are specific to its ratemaking history and its current posture with respect to its Crystal River 3 nuclear power plant. The Commission permitted PEF to recover through base rates its investment in Crystal River 3 in Order No. 8160, issued February 2, 1978, in Docket No. 770136-EU,. At that time, the Commission established depreciation rates designed to

enable PEF to recoup the costs of its investment in Crystal River 3 over the anticipated life of the unit. If and when PEF's proposed modifications enter service, Crystal River 3 will have been in commercial service for approximately 30 years. Moreover, recent base rate proceedings have been the subjects of settlements rather than detailed reviews of individual accounts. If PEF is allowed to recover the costs of its proposed project to increase the generating capacity of Crystal River 3 through the fuel cost recovery clause, it will avoid an analysis of the existing undepreciated balance of the investment in Crystal River 3, an analysis of the depreciation expense currently associated with the unit, as well as a consideration of the impact of the extended life of the unit on current ratemaking.

9. For the above-stated reasons, it would be both unnecessary and inappropriate to address cost recovery issues in this need determination proceeding. Under the circumstances of this case, it would also be fundamentally unfair to the Intervenors. The petition was filed on September 22, 2006. On the Commission's internal case schedule, which is unofficial, tentative and subject to revision, intervener testimony is shown to be due on November 20, 2006. However, no Order Establishing Procedure had been issued as of November 16, 2006. Requiring parties to meet a tentative schedule that has not been memorialized in an order, and where there is no statutory mandated timeline for recovery issues, would violate due process and fundamental fairness.

SUMMARY AND PRAYER FOR RELIEF

10. By including its anomalous, controversial, and fundamentally inappropriate request to recover the costs of nuclear generating plant through the Fuel Clause, PEF is attempting to piggyback onto the expedited time frames of the Siting Act an issue that is

separate from and unrelated to the subject of a determination of need, and to rush the Commission into a hurried decision on a matter of extreme importance to customers. The Commission should recognize and take into account PEF's "strong and obvious incentive" to steer ever-increasing amounts of costs through the cost recovery clause in order to shield base rate earnings and avoid analyses of the adequacy of base rates to accommodate incremental investment and expenses. It should sever from the need determination proceeding, the aspect of PEF's petition that treats the manner in which future costs associated with its CR3 project would be recovered in the event PEF receives all required regulatory Siting Act approvals.

WHEREFORE, the Citizens, Florida Retail Federation, and AARP hereby request that the Commission sever from this docket, and abate pending the formulation and scheduling of appropriate proceedings, the issue of the manner in which costs associated with the CR3 project would be recovered in the future.

Respectfully Submitted,

Harold McLean
Public Counsel

s/Patricia A. Christensen_
Patricia A. Christensen
Associate Public Counsel
Florida Bar No. 989789

Joe McGlothlin
Associate Public Counsel
Florida Bar No. 163771

s/Michael B. Twomey
Michael B. Twomey
P.O. Box 5256
Tallahassee, Florida 32314-5256
Phone: 850/421-9530
FAX: 850/421-9530

Attorney for AARP

Office of the Public Counsel
c/o The Florida Legislature
111 West Madison Street, Room 812
Tallahassee, Florida 32399-1400
(850) 488-9330
Fax: (850) 488-4491

s/Robert Scheffel Wright
Robert Scheffel Wright
Florida Bar No. 966721
225 South Adams Street,
Suite 200
Tallahassee, Florida 32301
Phone: 850/222-7206
FAX: 850/561-6834

Attorneys for the Florida
Retail Federation

DOCKET NO. 060642-EI
CERTIFICATE OF SERVICE

I, HEREBY CERTIFY that a true and correct copy of the Office of Public Counsel Motion to Serve and/or Abate the Recovery Proceeding had been furnished by electronic mail and U.S. Mail on this 20th day of November, 2006, to the following:

Paul Lewis
Progress Energy Florida, Inc.
106 E. College Ave., Suite 800
Tallahassee, FL 32301-7740

John T. Burnett/R. Alexander Glenn
Post Office Box 14042
St. Petersburg, FL 33733

Administrative Procedures Committee
Room 120 Holland Building
Tallahassee, FL 32399-1300

Dept. of Community Affairs
Valerie Hubbard
Division of Community Planning
2555 Shumard Oak Blvd.
Tallahassee, FL 32399-2100

Department of Environmental Protection
Buck Oven/Michael P. Halpin
2600 Blairstone Road MS 48
Tallahassee, FL 32301

Lisa Bennett
Florida Public Service Commission
2540 Shumard Oak Blvd.
Tallahassee, FL 32399-0850

James M. Walls/Dianne M. Tripp
P.O. Box 3239
Tampa, FL 33607-5736

John McWhirter
McWhirter Reeves Law Firm
400 N. Tampa Street, Ste.2450
Tampa, FL 33602

Patricia A. Christensen
Associate Public Counsel