

ORIGINAL

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Electronic Filing

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b. Docket No. 060658-EI

In re: Petition on behalf of Citizens of the State of Florida to required Progress Energy Florida, Inc. to refund customers \$143 million

c. Document being filed on behalf of Office of Public Counsel

d. There are a total of 7 pages.

e. The document attached for electronic filing is Citizens' position on issues identified during prehearing conference.

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Thank you for your attention and cooperation to this request.

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DOCUMENT NUMBER-DATE

02592 MAR 26 5

FPSC-COMMISSION CLERK

ORIGINAL

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In Re: Petition on behalf of Citizens of)
the State of Florida to require) DOCKET NO. 060658-EI
Progress Energy Florida, Inc. to)
refund to customers \$143 million)
_____)

CITIZENS' POSITIONS ON ISSUES IDENTIFIED DURING PRHEARING CONFERENCE

ISSUE 1: Did PEF act prudently in purchasing coal for Crystal River Units 4 and 5 beginning in 1996 and continuing to 2005?

Citizens: No. To achieve flexibility, PEF designed and built Crystal River 4 and 5 to be able to burn a 50/50 blend of subbituminous and bituminous coals. In the early 1990s the discovery of higher Btu subbituminous Powder River Basin coal and competition between railroads caused PRB coal to become significantly cheaper (delivered) than the eastern bituminous coal PEF was burning in CR4-5. As other utilities turned to Powder River Basin coal to lower fuel costs borne by customers, PEF continued to purchase more expensive bituminous coal and "synfuel" from its affiliates and pass the extra costs on to customers. PEF knew, or should have known, of the opportunity presented by PRB, and should have acted timely to lower its fuel costs during 1996-2005. There was no impediment between a management acting prudently in its customers' interests and significantly lower fuel costs.

OPC witness: Robert Sansom

In determining Issue 1, the Commission may consider including, but not limited to, the following:

Environmental Permitting

Citizens: The Siting Board's certification order terms allowed PEF to burn the 50/50 blend in CR4-5. Subsequently, PEF jettisoned subbituminous coal from its application for its first federal "Title V" permit. Since 2000 (when that permit took effect) PEF has not been authorized to burn PRB coal in units designed to burn it. Having ensured that result, in this case PEF first pointed to its limited permit as justification for not purchasing cheap PRB, yet now claims the same omission was "no harm, no foul." PEF's permitting conduct was as conspicuously imprudent as its explanations are contradictory and disingenuous.

OPC witnesses: Robert Sansom; Stephen Smallwood, P.E.

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FPSC-COMMISSION CLERK

Coal Procurement Practices

CR-3

Citizens: CR3 was nuclear in 1978, when PEF designed and sought state certification of CR4-5 to burn PRB, and still nuclear in 2006, when PEF applied to modify its federal permits to authorize burning PRB in CR4-5. Only the period 1996-2005 covered by OPC's Petition is the subject of PEF's "CR3 concern." If applicable, prudence would have required PEF to attend to any NRC information requirements at the outset, so that it would be positioned to burn PRB when economical to do so. CR1-2 boilers are far closer to CR3 than are CR4-5 and pose greater risks.

OPC witness: Robert Sansom

CR-4 & CR-5 Operational Matters

Citizens: Based on ample historical data, CR4-5 boilers were designed super-conservatively to handle coal having slagging and fouling properties more severe than the 50% PRB design basis blend.

Existing blending equipment is adequate, and replacement unnecessary and wasteful.

Because *all* systems were designed and sized to sustain 5% overpressure with 50% PRB, the only capital costs associated with burning the blend relate to dust and fire suppression, and only to the extent they exceed the equipment that PEF allowed to deteriorate.

PRB can be managed safely through appropriate methods and meticulous housekeeping, matters that prudent management acting in customers' interests would have undertaken to garner savings.

Test burns need not take longer than 2-3 weeks. Moreover, had PEF prudently conducted test burns of the 50/50 design blend when CR4-5 were new, PEF would have been positioned to purchase and burn PRB coal when it became the economical choice.

OPC witnesses: Robert Sansom, Joseph Barsin, David Putman, Stephen Smallwood

Megawatt Capacity

Citizens: The limiting factor on CR4-5 megawatt production is “5% overpressure,” the maximum safe boiler operating pressure. At 5% overpressure the turbine produces the same megawatts, regardless of the fuel being burned. CR4-5 were explicitly designed and built to supply, without limitation, 5% overpressure steam to the turbine when burning the 50/50 blend. As specified and built, all systems, including the six pulverizers and the coal supply system, have ample capacity to sustain 5% overpressure. *Before* OPC filed its petition, PEF’s consulting engineers assessed the units and predicted no derating below 70% PRB blend.

OPC witnesses: Joseph Barsin, David Putman

Coal Availability and Costs

Citizens: PRB coal was available to PEF in large quantities and at costs significantly lower than alternatives during 1996-2005. Pertinent market information was disseminated widely in the utility industry at the time. Actual purchases of PRB by TECO, adjusted for delivery to Crystal River, provide an accurate picture of the opportunity that was available to PEF (but not acted on) during the period, as do bids submitted to PEF by PRB producers in 2003 and 2004. The notion that the same PRB producers who were marketing aggressively elsewhere elected to bypass CR4-5 simply is not credible.

OPC witnesses: Robert Sansom, David Putman

Affiliates

Citizens: PEF failed to identify subbituminous coal as a fuel for CR4-5 in its Title V application, but later amended that application to seek authority to burn “synfuel” purchased from affiliates. The “synfuel” purchases, which as with bituminous coal were more expensive than PRB during 1996-2005, helped enable parent Progress Energy to realize tax credits and other synfuel-related revenues valuable to the corporation but not its customers, who forewent the opportunity afforded by PRB to lower fuel costs. In these and other particulars, PEF subordinated customers’ interests to affiliates’ profits.

OPC witness: Robert Sansom

ISSUE 2: **If the Commission determines that PEF acted imprudently in its coal purchases, should PEF be required to refund customers for coal purchased to run Crystal River Units 4 and 5 during the time period of 1996 – 2005?**

Citizens: Yes. Under the current system, utilities may collect fuel costs as they are incurred and before providing information sufficient to establish the costs are prudent. The PSC must balance this benefit to utilities with measures adequate to protect customers’ interests. Prudence review entails-not only amounts spent-but

decisions made regarding alternatives. If a utility elects not to provide all relevant facts, placing time limits on parties' ability to obtain such information from utilities would send the message that a utility which submits comprehensive information is subject to prudence review, but one which holds back may avoid it.

OPC witnesses: Dan Lawton, Todd Bohrmann

ISSUE 3: Under the circumstances of this case, does the Commission have the authority to grant the relief requested by OPC?

Citizens: Yes. Citizens do not ask the Commission to employ hindsight. In Order Nos. 12645, 13452, and PSC 97-0608-FOF-EI, the Commission recognized it was allowing utilities to collect fuel costs based on partial information, and rejected attempts to limit the time in which it could revisit past amounts upon receiving facts relevant to prudence. The Florida Supreme Court affirmed the ability of the Commission to make adjustments in the continuous fuel proceeding without engaging in "retroactive ratemaking." Citizens have presented facts relevant to prudence of PEF's fuel purchases for CR4-5 (see positions 1,4) that PEF never submitted to the Commission.

OPC witnesses: Dan Lawton, Todd Bohrmann

ISSUE 4: If the Commission determines that PEF should be required to refund customers for coal purchased to run Crystal River Units 4 and 5, what amount should be refunded, and how and when should such refund be accomplished?

Citizens: The amount of overcharges by year are:

Year	Excess Coal Costs \$	Excess SO ₂ Allowance Cost \$	Total Excess Fuel Charges \$
1996	1,056,000	N/A	1,056,000
1997	5,617,376	N/A	5,617,376
1998	7,703,136	N/A	7,703,136
1999	8,412,664	N/A	8,412,664
2000	4,884,739	1,497,278	6,382,017
2001	14,923,313	1,897,541	16,820,854
2002	20,712,248	1,410,049	22,122,297
2003	14,108,871	1,413,510	15,522,381
2004	17,603,768	4,196,799	21,800,567
2005	21,572,511	7,513,540	29,086,051
Total w/o Interest	116,594,626	17,928,717	134,523,343

The total refund is based on the beginning year selected. By 1996 the opportunity to save costs had been fully established; in that year PEF excluded subbituminous coal from its federal permit application.

OPC witness: Robert Sansom

ISSUE 5: **If the Commission determines that PEF willfully violated any lawful rule or order of the Commission or any provision of Chapter 366, Florida Statutes, should the Commission impose a penalty on PEF, and what should be the amount of such penalty?**

Citizens: No position.

ISSUE 6: **Should this docket be closed?**

Citizens: If the Commission closes this docket, it should state clearly that parties may pursue related issues for years following 2005 in true-up proceedings or other appropriate proceedings.

s/ Joseph A. McGlothlin
Joseph A. McGlothlin
Associate Public Counsel

DOCKET NO. 060658-EI
CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of Citizens' Positions on issues Identified During Prehearing Conference has been furnished by electronic mail and U.S. Mail on the 26th day of March, 2007 to the following:

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