

ORIGINAL

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 Sent: Monday, May 14, 2007 2:33 PM  
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 Subject: Docket 070052 Filing

Attachments: PEF Response in Opposition to Joint Motion.pdf



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<<PEF Response in Opposition to Joint Motion.pdf>>

Attached for filing and e-service on behalf of Progress Energy Florida, Inc. is Progress Energy Florida, Inc.'s Response in Opposition to Joint Motion to Reschedule Evidentiary Hearing or, in the Alternative, to Revise Procedures Milestones of the Order on Procedure.

This filing consists of 6 pages and paper copies will be sent to parties of record in today's mail.

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FPSC-COMMISSION CLERK

ORIGINAL

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: PEF's 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 )  
through the Fuel Clause )  
\_\_\_\_\_ )

Docket No.: 070052

Submitted for Filing: May 14, 2007

**PROGRESS ENERGY FLORIDA, INC.'S RESPONSE IN OPPOSITION TO  
JOINT MOTION TO RESCHEDULE EVIDENTIARY HEARING OR,  
IN THE ALTERNATIVE, TO REVISE PROCEDURAL MILESTONES  
OF THE ORDER ON PROCEDURE.**

Progress Energy Florida, Inc., pursuant to Rule 28-106.204(1), F.A.C., hereby files its Response in Opposition to Joint Motion to Reschedule Evidentiary Hearing or, in the Alternative, to Revise Procedural Milestones of the Order on Procedure ("Joint Motion"). The Joint Movants<sup>1</sup> have not shown any good cause why the hearing in this matter should be rescheduled or why the procedural deadlines set forth in the Order Establishing Procedure should be revised. Accordingly, PEF requests that the Commission deny the Joint Motion. In support of its response, PEF states:

1. PEF initially filed its Petition for its CR3 Uprate Project nearly eight months ago on September 22, 2006. The Petition included a request for both the need determination for the project, as well as cost recovery through the fuel clause. Then, on November 20, 2006, OPC, FRF, and AARP filed a motion which sought to abate and sever the cost recovery portion of PEF's Petition. PEF agreed to sever the cost recovery portion, with the understanding that the cost recovery issue would be promptly decided at the conclusion of the need determination.

<sup>1</sup> The Office of Public Counsel ("OPC"), AARP, the Florida Industrial Power Users Group ("FIPUG") and the Florida Retail Federation ("FRF") jointly filed this motion.

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FPSC-COMMISSION CLERK

2. The above docket was established, on or about January 16, 2007, to address the cost recovery portion of PEF's Petition. On February 2, 2007, Joint Movants filed yet another motion to abate the cost recovery proceeding. The Commission voted on and denied this motion at the March 27, 2007 Agenda Conference. Counsel for OPC and FRF attended this hearing. The written order denying the motion to abate was issued on April 17, 2007. The Order Establishing Procedure ("OEP") was subsequently issued on May 2, 2007.

3. Joint Movants have had PEF's Petition for eight months. The cost recovery issues set forth in that Petition have not changed since that filing. Despite numerous attempts by Joint Movants to convince this Commission that it should not consider PEF's cost recovery request until some later date, the Commission ruled unequivocally on March 27, 2007 that the cost recovery proceeding would not be further abated. The Commission is ready to hear this case. PEF is ready to present its case. Joint Movants, however, although the case has been sitting for eight months and they have known since March 27 that this case was moving forward and going to hearing, have apparently done nothing to prepare their case. Now Joint Movants are requesting that the Commission give them even more time in which to do so.

4. Joint Movants ask for two alternative forms of relief. First, they request that the hearing in this matter be continued approximately 5 weeks, or until September 11, 2007. In support of this request, Joint Movants make two erroneous arguments: (1) this proceeding did not "start" until the OEP was issued; and (2) PEF has not shown any need for the current schedule established by the Prehearing Officer. Joint Movants alternatively request an extension for the testimony deadlines currently established in the OEP. Their sole argument in support of this request is that the month time period between the Prehearing Conference and the hearing would accommodate their request for the extension. Joint Movants have not satisfied their burden to show good cause for either of these requests and thus both of them must be denied.

5. For Joint Movants to be entitled to either a continuance or an extension of time, they must show good cause. Specifically, Rule 28-106.210, F.A.C. only permits continuances of hearings “for good cause shown.” Similarly, Rule 28-106.204(5), F.A.C. states that motions for extensions of time “*shall* state good cause for the request” (emphasis added). Joint Movants do not provide any explanation that amounts to good cause for either of their requests. Taken in turn, each of their arguments fails to demonstrate good cause.

6. To support their request for a continuance of the hearing, Joint Movants first complain that the May 2nd OEP acts as the “starting gun” and “compresses the time available for case preparation.” (Jt. Mot. Para. 1). This proceeding commenced with PEF’s Petition on September 22, 2006. Further, Joint Movants were well-aware on March 27, when their motion to abate or stay was denied, that PEF’s petition for cost recovery was to be set for evidentiary hearing. Despite this knowledge, Joint Movants apparently did not make any attempts to contact potential consultants in advance of the issuance of the OEP. They have not come to the Commission and said that they have engaged experts and that those experts have conflicts with the existing hearing schedule. Joint Movants give no reason why they could not have been meeting with such consultants, so that when the OEP was issued, they would have been in a better position to move forward. Apparently, having known about the Petition since September 2006, and about the denial of the motion to abate since March 27, Joint Movants have not even retained consultants or identified witnesses. Joint Movants have failed to prepare their case in a reasonable and timely manner, and they cannot now point to this failure as the good cause needed to move back either the hearing date or the other deadlines in the OEP.

7. Joint Movants’ second contention in support of their continuance request is an improper attempt to shift the burden of this motion to PEF. Rather than carry their burden to show good cause for an extension or a continuance, Joint Movants state “that PEF failed to show

any need for an overly aggressive schedule . . .” (Jt. Mot. Para. 1). Joint Movants are wrong on this point for three reasons. First, it is not PEF’s burden to show that the existing schedule is necessary and appropriate. As clearly laid out in the rules, because Joint Movants want to change the schedule, they have to show good cause for the change. Second, even though it is not PEF’s burden to show a need for the existing schedule, PEF does have a need for the hearing to be in August, as set forth in the OEP. PEF decided to go forward with this project partly in reliance on the Commission’s policy regarding cost recovery. PEF has been requesting this cost recovery determination for months. It is unfair to yet again make PEF wait for the Commission’s ruling when Joint Movants have not met their burden of showing good cause for a further delay. Third, the schedule is not “overly aggressive,” especially considering that PEF originally filed in September 2006 and the motion to abate was denied March 27. Throughout this entire proceeding, PEF has consistently indicated that the cost recovery issue was important to the Company and its decision to do this project, and that it wanted and was entitled to a decision on the issue as soon as the Commission could consider it. Joint Movants, however, now come into the Commission and claim they do not have adequate time to prepare this case.<sup>2</sup> Again, this is not good cause.

8. Finally, in support of their request for an extension of the various testimony deadlines, Joint Movants argue that the schedule can accommodate the changes because the Prehearing Conference is almost a month before the hearing. (Jt. Mot. Para. 2). Again, Joint Movants do not show good cause for the extension. Just pointing out additional time in the schedule set forth in the OEP does not equate to good cause why they cannot meet the current

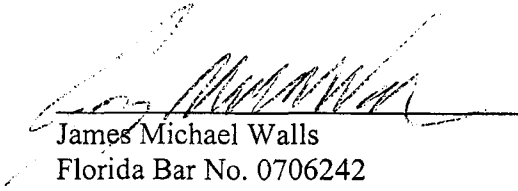
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<sup>2</sup> Joint Movants also suggest that they need more time because of the cost of the Uprate Project, which has been known to Joint Movants since September 2006. (Jt. Mot. Para. 1). This fact, however, does not demonstrate good cause why Joint Movants have not prepared their case. Absent an explanation as to why they have not done so, there is no good cause for a continuance of the hearing at this late point in the proceeding.

dates in the OEP. Because Joint Movants have not demonstrated good cause why they cannot meet the current deadlines, there are no grounds for this Commission to grant their request for an extension of the current dates in the OEP.

WHEREFORE, for all the foregoing reasons, PEF respectfully requests that this Commission deny the Joint Motion in its entirety and enforce the deadlines established in the OEP.

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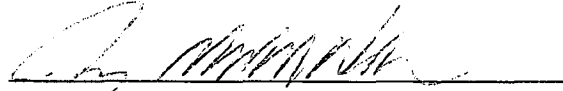


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**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished to all counsel of record and interested parties as listed below via electronic mail where indicated by

\* and U.S. Mail this 14<sup>th</sup> day of May, 2007.



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