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Subject: Docket 080148-EI Filing: PEF's Memorandum on Additional Issues
Attachments: PEF Memo on Additional Issues.pdf

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Docket 080148-EI

In re: Petition for Determination of Need for Levy Units 1 and 2 Nuclear Power Plants by PEF

On behalf of Progress Energy Florida

Consisting of 7 pages

The attached document for filing is PEF's Memorandum on Additional Issues

<<PEF Memo on Additional Issues.pdf>>

DOCUMENT NUMBER-DATE

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FPSC-COMMISSION CLERK

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In Re: Petition for Determination of)
Need for Levy Units 1 and 2 Nuclear)
Power Plants.)
_____)

Docket No: 080148

Submitted for Filing: May 7, 2008

MEMORANDUM ON ADDITIONAL ISSUES

Progress Energy Florida, Inc. ("PEF" or the "Company") hereby files this Memorandum on Additional Issues raised by White Springs Agricultural Chemicals, Inc. d/b/a PSC Phosphate – White Springs ("White Springs") and the Southern Alliance for Clean Energy ("SACE") in their respective Prehearing Statements, specifically, Issues 9 and 10. Neither of these additional issues are necessary or proper, and they should be excluded for the following reasons:

Issue 9

In Issues 1-7, Staff, PEF, and even White Springs and SACE have proposed seven substantive issues that they all agree should be addressed at the hearing in this matter. In each of those seven issues, Staff has prepared language that will allow parties to take positions that can address the need for one, both, or none of the proposed nuclear units at issue. For example, Staff's Issue 1 states:

"Is there a need for the proposed generating units, taking into account the need for electric system reliability and integrity, as this criterion is used in Section 403.519(4), Florida Statutes?"

In response to this issue, White Springs and SACE can take the position that one, both, or none of the proposed units are needed. The same holds true for Issues 2-7.

Rather than follow this simple and efficient process that will minimize the number of substantive issues that the Commission will have to address at the hearing, White Springs and SACE propose doubling the amount of issues in this case through the introduction of their Issue 9. Specifically, White Springs and SACE raise the following issue as "Issue 9" in their respective Prehearing Statements:

“Should the Commission separately assess the need for each of the proposed generating units using the criteria set forth in Section 403.519(4), Florida Statutes?”

By adding Issue 9, the Commission would have to unnecessarily consider fourteen substantive issues, rather than the seven than Staff has proposed, notwithstanding the fact that the addition of the seven new issues that will have to be added to separately address the consideration of each unit independently will not provide any additional benefit to the Commission or any party. Stated simply, proposed Issue 9 is redundant of the well-crafted issues that Staff has proposed that allow parties to take positions on one, both, or none of the proposed units, and proposed Issue 9 will do nothing more than cause undue complication and burden.

Additionally, proposed Issue 9 demands that the Commission address the need for each of the proposed nuclear units in complete isolation. Said another way, proposed Issue 9 necessarily denies the Commission the ability to examine the cost effectiveness of the two units as a pair. A necessary part of PEF's estimate of the cost of Levy Units 1 and 2 is the cost efficiencies that arise from the construction of the second unit shortly after completion of the first unit. The price efficiencies achieved by constructing the second unit cannot be ignored by the Commission in its overall determination of the need for both units. Issue 9 improperly requires the Commission to take those price efficiencies out of the equation, even though they form an important part of the cost effectiveness of both units.

If the Commission were to consider the need for each of the units separately, as Issue 9 proposes, there would also be speculation as to what each unit would separately cost. PEF is currently negotiating with the vendor for the price of engineering, procurement, and construction for two units. Because of this fact, PEF does not know what the units would cost separately, and it would be speculation to assume what the effective price of the units would be separately, without the price efficiencies. Thus, proposed Issue 9 would require the Commission to improperly speculate and base its findings on facts that are not and will not be in evidence.

Issue 10

White Springs and SACE have also raised the following issue for consideration at the hearing:

“Should the Commission require, as a condition of granting a determination of need for the proposed units, that Progress Energy Florida, Inc. implement contractual and other strategies required to effectively manage the units’ construction cost and schedule and the risks to consumers associated with cost overruns and project delays?”

This issue is improper for consideration in this proceeding for a number of reasons. First, there is no legal authority for the Commission to issue a conditional need in the manner called for by this issue. Second, consideration of contractual terms are appropriate in subsequent cost recovery proceedings, not in this need proceeding, thus, this issue is wholly irrelevant to the need determination petition which PEF has filed and which is at issue. Third, if the Commission issues a conditional need in this manner, it is the equivalent of not granting a need at all. Finally, the issue offers no specific guidance on what PEF must do to “effectively” manage costs in its contracts or the undefined “strategies” and, therefore, the called for conditions are, by lack of definition, arbitrary and capricious. Therefore, this issue should be excluded from the Commission’s consideration.

First, there is no legal authority for the Commission to grant a conditional need such as this, in which particular contractual terms and other contractual strategies are imposed upon the utility as a condition for the need. Never before has the Commission required that a utility obtain certain contractual terms as a condition for a need order, nor has the Commission required a utility to employ certain specific contracting strategies as this issue requires. There is a good reason why the Commission has never done this – imposing specific contractual terms and project management strategies would essentially place the Commission into the shoes of PEF’s managers. The Commission does not interfere with the day-to-day management of the utilities it regulates. This is a clearly-recognized principle of utility regulation. Indeed, it is questionable whether the Commission, or even PEF, would be able to specify at this time what the appropriate contractual provisions would be and whether they are attainable in PEF’s current negotiations.

This is an ongoing process, and PEF must retain the flexibility to exercise its good business judgment in managing this project. Any attempt by the Commission to impose specifics, as contemplated by this issue, would be wholly unworkable.

This issue is also inappropriate for inclusion in this proceeding, even if the intention is for the Commission to generally require PEF to adopt strategies to limit risk, because this issue is more appropriately addressed in a subsequent prudence proceeding. Pursuant to Rule 25-6.0423, F.A.C., PEF, upon obtaining a need, will present its costs on an annual basis for the Commission to review for prudence. Once the units go on-line, PEF will move for a base rate increase to include the costs for the units in base rates. During each of these proceedings, the Commission will have an opportunity to review the prudence of PEF's expenditures. This review includes review of the costs, contracts, and of PEF's project management policies and strategies. In these subsequent proceedings, the Commission can review the prudence of contractual provisions and project management strategies at the appropriate times. What the Commission cannot do, and is not permitted to do, is condition a need in the manner suggested by proposed Issue 10.

Indeed, such a conditional need would be no need at all. The Company would not have the certainty it needs, both in the financial markets and with the other licensing agencies (like the Nuclear Regulatory Commission and the Florida Department of Environmental Protection), that the PSC actually granted a determination of need for the projects. This result flies in the face of the legislative intent of Section 403.519, Florida Statutes and ignores the provisions of Rule 25-6.0423, F.A.C. which allow the Commission to address issues such as the prudence of contracts and project management after a determination of need has been issued.

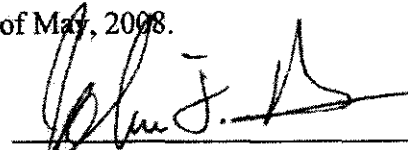
The uncertainty of a conditional need is compounded by the complete failure of the issue to frame specific contractual terms and strategies that put PEF on notice of what PEF must do to "effectively" manage costs. There is nothing in the issue itself or in the evidence in this proceeding that identifies specific, attainable "effective" cost-management terms and strategies.

This failure renders issue 10 arbitrary and capricious because any application of the issue denies PEF notice and an opportunity to be heard on whether the necessarily after-the-fact "conditions" are attainable under current market conditions and in fact effective in managing costs. Due process requires that PEF receive advance notice and an opportunity to be heard on exactly what "conditions" PEF is expected to meet before the conditions are imposed. Issue 10 fails to provide PEF due process.

For the foregoing reasons, PEF respectfully requests that the Commission excluded proposed Issues 9 and 10 from consideration in this matter.

Respectfully submitted this 7th day of May, 2008.

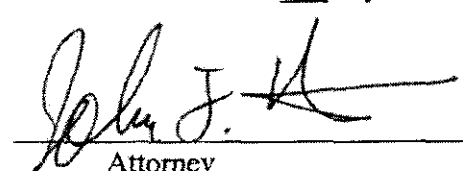
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CERTIFICATE OF SERVICE

I HEREBY CERTIFY a true and correct copy of the foregoing has been furnished to counsel and parties of record as indicated below via electronic and U.S. Mail this 7th day of May, 2008.

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