

Ruth Nettles

090372-EQ

From: Amra Rickwa [arickwa@icardmerrill.com]
Sent: Wednesday, February 17, 2010 4:55 PM
To: Filings@psc.state.fl.us
Subject: Docket No. 090372-EQ - US Funding, LLC's Response to Florida Biomass Energy, LLC's Motion to Dismiss
Attachments: US Funding Response to Biomass Motion to Dismiss.pdf

- a. Person responsible for filing

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- b. Docket No. 090372-EQ In re: Order No. PSC-09-0852-PAA-EQ Issued December 30, 2009, In re: Petition for approval of negotiated purchase power contract with FB Energy, LLC by Progress Energy Florida
- c. Filed on behalf of U.S. Funding Group, LLC.
- d. Total Pages = 3
- e. U.S. Funding, LLC's Response to Florida Biomass Energy, LLC's Motion to Dismiss

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2/18/2010

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Petition for approval of negotiated purchase power contract with FB Energy, LLC by Progress Energy Florida. DOCKET NO. 090372-EQ
ORDER NO. PSC-09-0852-PAA-EQ
ISSUED: December 30, 2009

**US FUNDING GROUP, LLC'S RESPONSE TO
FLORIDA BIOMASS ENERGY, LLC'S MOTION TO DISMISS**

US FUNDING GROUP, LLC ("Funding Group"), pursuant to Rule 28-106.204, Florida Administrative Code (F.A.C), hereby files this response in opposition to the Motion to Dismiss filed in this proceeding by FLORIDA BIOMASS ENERGY, LLC ("FB Energy") on February 9, 2010, and in support thereof states as follows:

1. Funding Group's Petition, in its entirety, and specifically, Paragraphs 4, 7 and 33, identify Funding Group's substantial interests that are or will be affected by the proposed action.
2. Funding Group's Petition is legally sufficient to establish Funding Group's standing to participate in these proceedings.

WHEREFORE, Funding Group hereby requests:

1. The Commission grant the undersigned a hearing in this matter, and at the conclusion of the same, that the Commission deny FB Energy's Motion to Dismiss; and
2. The Commission refer this matter to the Division of Administrative Hearings for the assignment of an Administrative Law Judge to conduct a hearing on the Petition; and

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3. Should the Commission grant FB Energy's Motion to Dismiss, that it be without prejudice to Petitioner's filing a timely amended Petition curing any identified defect.

Respectfully submitted,

s/ Stacy L. Dillard-Spahn

Robert K. Lincoln

Fla. Bar No. 0006122

Stacy Dillard-Spahn

Fla. Bar No. 0022496

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on February 17, 2010, I electronically filed the foregoing with the Florida Public Service Commission at filings@psc.state.fl.us and furnished a true and correct copy of same by electronic and/or U.S. Mail to the following:

FB Energy, LLC
Richard Jensen
100 Third Ave. West
Bradenton, FL 34205
Ph: 941-567-1631

Progress Energy Florida, Inc.
Mr. Paul Lewis, Jr.
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Tallahassee, FL 32301-7740
Ph: 850-222-8738
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Progress Energy Service Company, LLC (09a)
John T. Burnett
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s/ Stacy L. Dillard-Spahn

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Office of Commission Clerk Official Filing

Ruth Nettles

090505 - ET

From: Cecilia Bradley [Cecilia.Bradley@myfloridalegal.com]
Sent: Wednesday, February 17, 2010 4:58 PM
To: Filings@psc.state.fl.us
Cc: John Moyle; John T. Butler (John.Butler@fpl.com); Ken Hoffman; Lisa Bennett; Vickie Gordon Kaufman (vkaufman@kagmlaw.com); Wade Litchfield
Subject: Docket No. 090505; AG's Prehearing Statement
Attachments: 090505.AG's Prehearing Statementl.doc; 090505.AG's Prehearing Statementl.pdf



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hearing Statem;hearing Statem

Attached is the Attorney General's Prehearing Statement for filing in Docket No. 090505. Thank you for your consideration of this matter.

(See attached file: 090505.AG's Prehearing Statementl.doc) (See attached file: 090505.AG's Prehearing Statementl.pdf)

Please note that Florida has a broad public records law, and that all correspondence to me via email may be subject to disclosure.

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Review of replacement fuel costs associated with the February 26, 2008 outage on Florida Power & Light's electrical system. DOCKET NO. 090505-EI
DATED: FEBRUARY 17, 2010

ATTORNEY GENERAL'S PREHEARING STATEMENT

Pursuant to Order No. PSC-09-0854-PCO-EI, filed December 30, 2009, Attorney General Bill McCollum files his Prehearing Statement.

- a. All Known Witnesses – The Attorney General's office does not intend to call any witnesses but reserves the right to cross-examine all other witnesses.
- b. All Known Exhibits – The Attorney General's office does not intend to offer any exhibits but reserves the right to use all exhibits submitted by other parties in cross-examination and argument.
- c. Attorney General's Statement of Basic Position

On February 26, 2008, portions of central and south Florida experienced a blackout after a fault occurred in the system. Approximately 596,000 FPL customer accounts and 354,000 non-FPL customer accounts were out of service. As a result of this incident there was a loss of 22 transmission lines, 4,300 megawatts ("MWs") of generation capacity, and 3,750 MW of customer load. Additionally two nuclear plants went offline; Turkey Point Unit 3 was offline for 158 hours, and Turkey Point Unit 4 was offline for 107 hours. With these nuclear plants offline for this extended period, FPL had to obtain high cost replacement power and generate power using far more expensive fuel than is used when generating electricity with nuclear power.

When the actual replacement power costs are compared to the costs which would have been incurred had the two nuclear plants continued to operate, FPL incurred (and charged customers) an extra \$15,974,055 in costs. The Attorney General's office concurs with the Office of Public Counsel that the full amount of \$15,974,055, plus interest, should be refunded to

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customers if FPL is to be truly responsible for the replacement power costs associated with this incident.

d. Attorney General's Position on the Issues

Issue 1: Should FPL credit to customers the replacement power costs attributable to the February 26, 2008 outage?

AG's POSITION: Yes. The parties have stipulated that FPL should be responsible for paying for the replacement costs and these costs should be refunded to customers.

Issue 2: How should the replacement power costs attributable to the February 26, 2008 outage be measured, and what is the amount of such costs?

AG's Position: The Attorney General's office concurs with the Office of Public Counsel that the true replacement cost of \$15,974,055, plus interest should be refunded to customers. This amount reflects the net replacement costs for the outages of 158 hours at Turkey Point Unit 3 and the 107 hours at Turkey Point Unit 4.

Issue 3: What is the appropriate method to credit customers for the replacement power costs determined pursuant to Issue 2?

AG's Position: Consistent with earlier rulings this year and because of the stress on customers due to the current economy, the refund should be a one-time credit at the earliest possible time.

- e. Stipulated Issues – The parties stipulated and the Commission approved an agreement that FPL would bear the cost of replacement power attributable to the Flagami Transmission Event, subject to the conditions listed in the Proposed Resolution of Issues, dated December 4, 2009, and approved by the Commission at its January 26, 2010 Agenda Conference.

 - f. Pending Motions – The Attorney General’s office may file a motion in limine regarding late-filed exhibits and limitations on cross examination..

 - g. Pending Confidentiality Claims or Requests – The Attorney General’s office has no pending confidentiality claims or requests.

 - h. Objections to Witness Qualifications as an Expert – The Attorney General’s office does not object to any identified person testifying but would object to the company employees, testifying about their work duties, being uniformly classified as experts and without the appropriate allocation of bias.

 - i. Compliance with Order No.PSC-09-0854-PCO-EI - The Attorney General’s office has
-

complied with all requirements of the Order Establishing Procedure entered in this docket.

Respectfully submitted this 17th day of February, 2010.

/s Cecilia Bradley
Cecilia Bradley
Senior Assistant Attorney General
Fla Bar No. 0363790

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The Capitol – PL01
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BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Review of replacement fuel costs associated with the February 26, 2008 outage on Florida Power & Light's electrical system. | DOCKET NO. 090505-EI
| DATED: FEBRUARY 17, 2010

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a correct copy of the Attorney General's Prehearing Statement has been furnished by electronic mail to the following on this 17th day of February, 2010:

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

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Tallahassee, FL 32301

s/ Cecilia Bradley
Cecilia Bradley
Senior Assistant Attorney General