

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Petition for limited proceeding to include Bartow repowering project in base rates, by Progress Energy Florida, Inc. | DOCKET NO. 090144-EI
ORDER NO. PSC-09-0415-PAA-EI
ISSUED: June 12, 2009

The following Commissioners participated in the disposition of this matter:

MATTHEW M. CARTER II, Chairman
LISA POLAK EDGAR
KATRINA J. McMURRIAN
NANCY ARGENZIANO
NATHAN A. SKOP

NOTICE OF PROPOSED AGENCY ACTION
ORDER GRANTING LIMITED PROCEEDING TO INCLUDE THE BARTOW
REPOWERING PROJECT IN BASE RATES,
TARIFF ORDER APPROVING TARIFF ASSOCIATED WITH THE BARTOW
REPOWERING PROJECT
AND
PROCEDURAL ORDER CONSOLIDATING DOCKETS

BY THE COMMISSION:

NOTICE is hereby given by the Florida Public Service Commission that the action discussed herein, regarding our approval of Progress Energy Florida, Inc.'s request for a limited proceeding for the Bartow Repowering Project and finding it appropriate pursuant to Order No. PSC-05-0945-S-EI, is preliminary in nature and will become final unless a person whose interests are substantially affected files a petition for a formal proceeding, pursuant to Rule 25-22.029, Florida Administrative Code.

Background

On March 20, 2009, Progress Energy Florida, Inc. (PEF or Company) filed tariffs and a petition for a limited proceeding to include the Bartow Repowering Project (Project) in base rates. The Company is engaged in business as a public utility providing electric service as defined in Section 366.02, Florida Statutes (F.S.), and is subject to the jurisdiction of this Commission. PEF's service area comprises approximately 20,000 square miles in 35 of Florida's counties. PEF serves more than 1.6 million retail customers.

PEF requested an increase in its retail rates and charges to generate \$126,212,000 in additional gross annual revenues, subject to refund. This increase would allow the Company to earn an overall rate of return of 7.87 percent, or a 10.00 percent return on equity (ROE). The Company based its request on the first year annualized revenue requirements for the Project. The 7.87 percent overall rate of return was calculated using the projected 2006 capital structure

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shown on MFR Schedule D-1 that was filed in its stipulated rate case in Docket No. 050078-EI.¹ The estimated in-service date for the Project is June 1, 2009. PEF has requested that the new rates become effective with the first billing cycle in July 2009.

On April 3, 2009, the Office of Public Counsel (OPC), the Florida Industrial Power Users Group (FIPUG), the Attorney General's Office, The Florida Retail Federation (FRF), and PCS Phosphate (collectively, Intervenor) filed a joint consolidated response, opposing PEF's request for interim rate relief, petition related to accounting treatment for pension and storm hardening expenses, and petition for limited proceeding to include the Bartow Repowering Project in base rates. On April 8, 2009, the parties and staff met to discuss the Intervenor's joint consolidated response. At the meeting, our staff noted that while a response to a response is not normally contemplated by our rules, it might be helpful for PEF to file some additional clarifying comments regarding the Intervenor's response. The Intervenor did not object to our staff's request at that time, nor have they filed an objection to PEF's response. PEF filed a response to the joint intervenors consolidated response on April 15, 2009, which is discussed below.

This order addresses PEF's request to increase its retail rates and charges to generate \$126,212,000 in additional gross annual revenues, subject to refund, for the Project. We have jurisdiction over this request for a rate increase under Sections 366.02, 366.03, 366.04, 366.05, 366.06 and 366.076, F.S.

2005 Stipulation

PEF's Petition

As part of its petition, PEF included testimony and exhibits as well as a tariff sheet listing its proposed charges. PEF asserts that pursuant to the 2005 Settlement and Stipulation (Stipulation), if PEF's retail base earnings fall below a 10 percent ROE, PEF may petition this Commission to amend its base rates as a limited proceeding pursuant to Section 366.076, F.S. PEF contends that its earnings are below 10 percent ROE, as reflected on its monthly earnings surveillance reports filed with the Commission. Therefore, PEF asserts that its request is consistent with and authorized by the Stipulation.

Intervenor's Consolidated Response

The Intervenor object to the granting of interim, expedited, or limited proceeding relief and assert that the entitlement of any rate relief should be within the evidentiary schedule established for Docket No. 090079-EI, the base rate proceeding. The Intervenor assert that our approval of the requested limited proceeding would interfere with the parties' preparation for the rate case and cause substantial hardship and prejudice. The Intervenor further contend that all separate petitions should be considered, if at all, in the rate case.

¹ The Stipulation was approved by Order No. PSC-05-0945-S-EI, issued September 28, 2005, in Docket No. 050078-EI, In re: Petition for rate increase by Progress Energy Florida, Inc.

The Intervenors recognize that major costs such as the Bartow Repowering Project could negatively impact PEF's earnings; however, the Intervenors contend that PEF could have filed the Bartow Petition in 2008, rather than at this time, because the Company's surveillance reports showed that PEF's achieved ROE was below 10 percent in its August 2008 Surveillance Report.

The Intervenors argue that PEF's request for a limited proceeding for the Bartow Repowering Project is erroneously based on a 10 percent floor which was not contemplated by the Stipulation approved by the Commission in Order No. PSC-05-0945-S-EI. The Intervenors further contend that the Stipulation acknowledges that the parties to the Stipulation would have a right to participate in a proceeding held pursuant to a limited proceeding request. However, the Intervenors assert that we should consider the Bartow Repowering Project in the rate case where it can receive a full evidentiary hearing before the rates are changed. Furthermore, the Intervenors' argue that the requested limited proceeding rate relief should not be granted prior to the rate case inquiry and hearing to be conducted in Docket No. 090079-EI.

PEF's Response to Joint Intervenors' Consolidated Response²

On April 15, 2009, PEF filed its response to the Intervenors' joint consolidated response. PEF asserts that the Stipulation provides that if PEF's retail base earnings fall below a 10 percent ROE, PEF may petition this Commission to amend its base rates as a limited proceeding. PEF contends that the Intervenors do not contest that PEF's retail base rate earnings have fallen below a 10 percent ROE, nor do the Intervenors contest that PEF is entitled to a limited proceeding for the Bartow Repowering Project.

PEF states that it is not claiming that it has a guaranteed 10 percent ROE in the Stipulation. Rather, PEF asserts that the 10 percent ROE represents a minimum reasonable ROE for purposes of this limited proceeding. Furthermore, PEF argues that the Intervenors concede that the 10 percent ROE is a "trigger" authorizing PEF to seek to amend its base rates when its achieved ROE falls below that threshold level. Thus, PEF contends that if it can seek to amend its base rates when earnings fall below 10 percent, then one could conclude that the rates are no longer fair, just, and reasonable. Accordingly, PEF asserts that the requested expedited limited proceeding is contemplated by the Stipulation and thus is appropriate.

Along with its petition for a limited proceeding, PEF filed a revised tariff, although PEF did not expressly request relief under the file and suspend provisions. PEF argues that by filing a revised tariff sheet with its petition for a limited proceeding, PEF triggered application of the "file and suspend" provisions even though the petition did not explicitly reference those provisions. In its response, PEF alternatively requests that its Limited Proceeding Petition be treated as a request for relief under the "file and suspend" provision, rather than the PAA procedures, if we believe that "file and suspend" is the appropriate relief mechanism.

² The Commission's rules do not contemplate a response to a response; however, a response was requested at the April 8, 2009 informal meeting, at which all parties attended. No objection has been filed to PEF's response.

Analysis

2005 Stipulation

On September 28, 2005, in Order No. PSC-05-0945-S-EI, issued in Docket No. 050078-EI, the Commission approved the Stipulation between the parties to PEF's last petition for a rate increase. The relevant portion of Section 7 of the Stipulation provides:

7. If PEF's retail base rate earnings fall below a 10 [percent] return on equity as reported on a Commission adjusted or pro-forma basis on a PEF monthly earnings surveillance report during the term of the Agreement, PEF may petition the Commission to amend its base rates notwithstanding the provisions of Section 4, either as a general rate proceeding or as a limited proceeding under Section 366.076, F.S. The Parties to this Agreement are not precluded from participating in such a proceeding, and, in the event PEF petitions to initiate a limited proceeding under this Section, any Party may petition to initiate any proceeding otherwise permitted by Florida law. . . .

In addition, Section 4 of the Stipulation provides that PEF may not petition for an increase in base rates that would take effect prior to the first billing cycle for January 2010, except as provided in Sections 7 and 10 of the Agreement. Section 7 allows PEF to petition for a limited proceeding if its retail base rate earnings fall below a 10 percent ROE as reported on its monthly earnings surveillance report.

In Order No. PSC-05-0945-S-EI we approved the Stipulation specifying that it established rates that are fair, just, and reasonable. Both the Intervenors as well as the Company agree that Section 7 of the Stipulation provides that the Company may seek to amend its base rates in the event that PEF's achieved ROE falls below the 10 percent threshold, notwithstanding, Section 4. Thus, we find that the Stipulation clearly contemplates PEF's request for a limited proceeding for the Bartow Repowering Project. As discussed further, it appears that PEF's retail base earnings have fallen below the 10 percent threshold. Therefore, we find that PEF's request for a limited proceeding to implement a base rate increase is appropriate.

Limited Proceeding

Section 366.076(1), F.S., provides that "the Commission may conduct a limited proceeding to consider and act upon any matter within its jurisdiction, including any matter the resolution of which requires a public utility to adjust its rates to consist with the provisions of this chapter." Furthermore, "[t]he commission shall determine the issues to be considered during such a proceeding and may grant or deny any request to expand the scope of the proceeding to include other matters." A limited proceeding should be narrow in scope and is designed to avoid the greater expenditure of time and resources typically associated with a full base rate proceeding. A limited proceeding is normally processed as a proposed agency action (PAA) in which a point of entry will be afforded to substantially interested persons to address concerns they may have regarding the petition.

In the instance case, PEF has petitioned us pursuant to Section 366.076, F.S., for a limited proceeding for the Bartow Repowering Project. As part of its petition, PEF included testimony and exhibits as well as a tariff sheet listing its proposed charges. While we may address this matter as a limited proceeding, we note that procedurally we must take affirmative action to suspend, approve, or deny the tariff in accordance with the “file and suspend” provisions in Chapter 366, F.S. We further note that substantially interested persons are afforded the same point of entry in both a “file and suspend” petition as well as a PAA limited proceeding.

File and Suspend

PEF’s petition for a limited proceeding to implement a base rate increase does not involve a full base rate proceeding. Rather, PEF has requested limited rate relief for the Bartow Project subject to refund pending a final hearing during PEF’s full base rate proceeding where the costs of the Bartow project will be analyzed by this Commission. PEF alternatively requests that its Limited Proceeding Petition be treated as a request for relief under the “file and suspend” provisions rather than our PAA procedures, if we believe that “file and suspend” is the appropriate relief mechanism. In support of PEF’s alternative request, the Company has asserted that by filing a revised tariff sheet to increase rates with its petition, PEF triggered the application of the “file and suspend” provisions even though its petition did not specifically reference those provisions.

The Intervenors argue that PEF’s request for a limited proceeding for the Bartow Repowering Project is erroneously predicated on a 10 percent floor which was not contemplated by the Stipulation. Moreover, the Intervenors contend that our approval of the requested limited proceeding would interfere with the parties’ preparation for the rate case and cause substantial hardship and prejudice. Rather, the Intervenors assert that we should consider the Bartow Repowering Project in the rate case where it can receive an evidentiary hearing before the rates are changed as a result thereof.

We have broad authority in determining just and reasonable rates and the means through which costs are recovered and rates are established. In Citizens v. Wilson, 571 So. 2d 1300 (Fla. 1990), the Court expressly confirmed the application of the “file and suspend” provisions to proceedings other than full base rate proceedings. Section 366.04, F.S., states that “[t]he commission shall have jurisdiction to regulate and supervise each public utility with respect to its rates and service. . . .” Section 366.05(1), F.S., states that “[i]n the exercise of such jurisdiction, the commission shall have power to prescribe fair and reasonable rates and charges . . . to be observed by each public utility.” Furthermore, Section 366.06(1), F.S., provides, in part:

- (1) A public utility shall not, directly or indirectly, charge or receive any rate not on file with the commission for the particular class of service involved, and no change shall be made in any schedule. All applications for changes in rates shall be made to the commission in writing under rules and regulations prescribed, and the commission shall have the authority to determine and fix

fair, just, and reasonable rates that may be requested, demanded, charged, or collected by any public utility for its service.

(Emphasis added). Under the “file and suspend” provisions, we can, based on adequate factual justification, approve rates subject to refund without first requiring a hearing.³

We conclude that, pursuant to the broad authority granted in Sections 366.04, 366.05, and 366.06, F.S., and the specific authority granted by the “file and suspend” provisions of Section 366.06(3), F.S., we may establish, prior to a full administrative hearing, rates subject to refund outside of full base rate proceedings.

PEF’s Petition for a Limited Proceeding for the Bartow Repowering Project contains a tariff sheet listing its proposed charges. Thus, by filing a revised tariff sheet with its petition PEF triggered the application of the “file and suspend” provisions of Section 366.06, F.S. Pursuant to our authority under these provisions, we may, without hearing, approve or deny recovery of the proposed charges subject to refund, pending the outcome of a final hearing in this matter.⁴ Alternatively, we may take no action on the proposed tariff within the 60-day suspension period, thus allowing the proposed charges to go into effect by operation of law.

For the reasons discussed *supra*, we find that the Stipulation clearly contemplates PEF’s request for a limited proceeding for the Bartow Repowering Project and that such a proceeding is not prohibited by the Stipulation. Moreover, we find that by filing the revised tariff sheet with its petition, PEF has triggered the application of the “file and suspend” provisions of Section 366.06, F.S. Finally, Section 366.06(3), F.S., requires that we take affirmative action to suspend, approve, or deny this petition within the 60-day statutory timeframe.

Bartow Repowering Project - Annual Base Rate Increase

The Project includes both the upgrade of 4 existing heavy oil-fired steam units to natural gas-fired combined cycle units and the addition, expansion, upgrade, and rebuilding of related transmission facilities. The expected in-service date for the Project is June 1, 2009. PEF witness Toomey presented the calculation of the \$126,212,000 annual revenue requirements for the Project on Exhibit No. PT-1 attached to his prefiled direct testimony. (See Attachment 1) The revenue requirements are based on the projected annualized rate base and related expenses during the first year of the Project’s operation. However, the 7.87 percent overall cost of capital utilized in the calculation of the revenue requirements is based on the projected 2006 capital structure shown on MFR Schedule D-1 that was filed in its stipulated rate proceeding in Docket

³ Citizens v. Mayo, 333 So. 2d 1 (Fla. 1976); Citizens v. Public Service Commission, 425 So. 2d 534 (Fla. 1982).

⁴ Order No. PSC-05-0187-PCO-EI, issued February 17, 2005, in Docket No. 041291-EI, In re: Petition for authority to recover prudently incurred storm restoration costs related to 2004 storm season that exceed storm reserve balance, by Florida Power & Light Company (leave to amend pleadings should be granted in order to allow disputes to be resolved on their merits), at p. 8.

No. 050078-EI.⁵ In calculating the 7.87 percent overall cost of capital, PEF substituted 10.00 percent as the return on equity (ROE) in the projected 2006 capital structure.

The estimated construction cost of the Project is \$605.6 million (\$646.0 million – system) for the upgraded generation units and \$108.9 million (\$154.2 million – system) for the transmission facilities or an estimated total Project construction cost of \$714.5 million (\$800.2 million – system). The estimated annual operating expenses, excluding income taxes, are \$43.9 million (\$47.0 million – system) for the upgraded generation units and \$2.6 million (\$3.2 million – system) for the transmission facilities or a total estimated annual operating expense of \$46.5 million (\$50.2 million – system). We have reviewed these estimated amounts and they appear reasonable for the Project.

For purposes of its request for a base rate increase through a limited proceeding under Section 366.076, F.S., PEF used an overall cost of capital of 7.87 percent based on an ROE of 10.00 percent and the capital structure for the projected historical test year ended December 31, 2006. According to PEF, both the ROE and the adjustments recognized in the capital structure are consistent with the 2005 Stipulation. Section 7 of the Stipulation states that if PEF's retail base rate earnings fall below a 10% return on equity, the Company may petition the Commission to amend its base rates notwithstanding the provisions of Section 4. The Company projects that its 2009 achieved ROE will be below 7.00 percent without any rate relief.⁶ Consequently, PEF believes the Stipulation expressly entitles the Company to request an increase in base rates associated with the Project to bring the Company's earnings up to an ROE of 10.00 percent.

As discussed in the Joint Intervenors' consolidated response to PEF's request for a limited proceeding, the "Intervenors vigorously object to this interpretation as contrary to the plain meaning of the Stipulation and the revenue sharing mechanism that it established." The Intervenors contend there is "no entitlement in the Stipulation that PEF should be allowed to earn at least 10% for 2009 as is suggested or claimed in the various PEF pleadings filed in these dockets." The Intervenors further contend that there is no express or implied authorization for PEF to receive the proposed relief while the Bartow rate relief request is pending. For these reasons, the Intervenors contend the proposed relief is not available to PEF and that the Company's request for recovery prior to an evidentiary hearing should be denied.

We find that the calculation of the \$126,212,000 annual base rate increase and 9.12 percent increase factor for the Bartow Repowering Project are reasonable for the purposes of this limited proceeding.

Rates Subject to Refund

In its Petition, PEF requested that the base rate increase be held subject to refund, stating the following:

⁵ Order No. PSC-05-0945-S-EI, issued September 28, 2005, in Docket No. 050078-EI, In re: Petition for rate increase by Progress Energy Florida, Inc.

⁶ PEF Petition, p.4, filed in Docket No. 090079-EI, In re: Petition for increase in rates by Progress Energy Florida, Inc.

PEF, accordingly, requests Commission approval to include the current Bartow Repowering costs in base rates and to allow a rate increase factor of 9.12 percent effective with the first billing cycle for July 2009 subject to refund, pending any necessary review of the reasonableness of those costs in the base rate proceeding.

(Petition, p. 2-3) It is not clear from this language whether or not it is PEF's intent to limit a review of the Project costs to only the construction costs and operating expenses that are shown on Exhibit PT-1. (See Attachment 1)

Although we are not making any adjustments related to the determination of the appropriate amount PEF is entitled to recover associated with the Project, we note that PEF's calculation is premised upon a number of assumptions that will be vigorously challenged by the Intervenor in the upcoming base rate proceeding in Docket No. 090079-EI. In addition, the construction costs and operating expenses are subject to review in the base rate proceeding in Docket No. 090079-EI. The calculation of the \$126,212,000 base rate increase also needs to be reviewed to insure that it is based only on incremental costs. Based on our ultimate decisions on these particular issues, the amount collected under this limited proceeding related to these issues shall be held subject to refund.

PEF's requested rate relief in this limited proceeding is predicated on a projected capital structure for the historical test year ended December 31, 2006. There is no provision, expressed or implied, that a projected capital structure for a historical test year from 3 years ago is the appropriate capital structure on which to base the cost of capital for purposes of determining the revenue requirement associated with this limited proceeding. In addition, the proposed capital structure reflects 2 specific adjustments related to imputed equity that total approximately \$866.6 million. Both of these adjustments are related to provisions from past stipulations that are not binding on our decisions going forward. Finally, in reconciling rate base and capital structure, PEF's proposed capital structure reflects a pro rata adjustment over all sources of capital. This reconciliation treatment is inconsistent with past Commission practice.

In addition to the issues related to the overall cost of capital PEF has used to determine the proposed amount to recover associated with the Project, PEF's calculation also failed to include the income tax effect of the adjustment required pursuant to Rule 25-14.004, Florida Administrative Code (F.A.C.). Based on past Commission precedent⁷ and financial information reported by PEF's parent company, Progress Energy, Inc., in its 10K report filed with the Securities and Exchange Commission, it is a rebuttable presumption that a parent debt adjustment should be applied pursuant to Rule 25-14.004, F.A.C.

We find that the \$126,212,000 annual base rate increase shall be held subject to refund pending a review and final determination of the appropriate calculation of the Bartow Repowering Project revenue requirements in PEF's base rate proceeding in Docket No. 090079-EI.

⁷ Order No. PSC-09-0283-FOF-EI, issued April 30, 2009, in Docket No. 080317-EI, In re: Petition for rate increase by Tampa Electric Company, pages 75-79.

Tariff Sheets

PEF witness Toomey attached PEF's proposed tariff sheets to his testimony as Exhibit PT-4 to reflect both the Project base rate increase factor of 9.12 percent and the 1.70 percent increase requested for interim relief in Docket No. 090079-EI, PEF's base rate proceeding. PEF shall file revised tariffs to reflect our decision within thirty days of the vote. The increase factor will apply to the customer charge, non-fuel energy charge, demand charge, delivery voltage credits, power factor, and premium distribution service charges. The increase factor will not apply to any load management, interruptible, or curtailable credits.

The 9.12 percent increase factor would increase the 1,000 kwh residential bill from the current \$122.79 to \$126.90, or by \$4.11. PEF's tariff sheets reflecting the Project increase are hereby approved, with the amounts collected held subject to refund pending a final hearing in PEF's base rate proceeding.

Effective Date

PEF requested to adjust base rates with the first billing cycle in July 2009. The date is based on PEF's expectation that the Project will begin commercial operation on June 1, 2009. Implementing the increase with the first billing cycle in July 2009 ensures that no usage is billed at the higher base rates prior to the commercial operation of the project.

We find that the effective date for implementing the base rate increase shall be the first billing cycle in July 2009. Starting with the first billing cycle in June 2009, PEF shall include bill inserts to notify its customers of the base rate increase. PEF shall provide staff a copy of the bill insert for prior review. If the commercial operation of the Project is delayed from the projected June 1, 2009, date, the effective date shall be moved to the first billing cycle 30 days following the commercial operation in-service date.

Security To Guarantee Amount Collected

PEF has requested that all funds collected subject to refund be secured by a corporate undertaking. The criteria for a corporate undertaking include sufficient liquidity, ownership equity, profitability, and interest coverage to guarantee any potential refund. We reviewed the financial statements to determine if PEF can support a corporate undertaking. Based on an estimated six-month collection period, we have determined the cumulative amount of revenues that may need to be protected is \$69.5 million. This amount consists of the relevant portion of the Company's request of \$63 million associated with the Project and the relevant portion of the interim rate increase for the six-month collection period of \$6.5 million. PEF's 2006, 2007, and 2008 financial statements were used to determine the financial condition of the Company. This analysis shows PEF has experienced a decline in its equity ratio in 2008, but the 42 percent equity ratio is still sufficient to support a corporate undertaking. The equity balance, while declining on a relative basis, is still significantly greater than the amount under consideration for a corporate undertaking. In addition, net income has been on average 5 times greater than the requested cumulative corporate undertaking amount. PEF's financial performance has

demonstrated adequate levels of profitability, liquidity and interest coverage to offset the decline in the equity ratio.

We believe PEF has adequate resources to support a cumulative corporate undertaking in the amount requested. Based on this analysis, we find that a cumulative corporate undertaking of \$69.5 million is acceptable. This brief financial analysis is only appropriate for deciding if the Company can support a corporate undertaking in the amount proposed and shall not be considered a finding regarding our position on other issues in this proceeding.

Based on the foregoing, it is

ORDERED by the Florida Public Service Commission that Progress Energy Florida, Inc.'s request for a limited proceeding to include the Bartow Repowering Project in base rates is hereby approved as set forth herein. It is further

ORDERED that Progress Energy Florida, Inc.'s request for a limited proceeding to implement a base rate increase for the Bartow Repowering Project is appropriate pursuant to Order No. PSC-05-0945-S-EI. It is further

ORDERED that the \$126,212,000 annual base rate increase shall be held subject to refund pending a review and final determination of the appropriate calculation of the Bartow Repowering Project revenue requirements in PEF's base rate proceeding in Docket No. 090079-EI. It is further

ORDERED that the increase factor will apply to the customer charge, non-fuel energy charge, demand charge, delivery voltage credits, power factor, and premium distribution service charges. It is further

ORDERED that the increase factor will not apply any load management, interruptible, or curtailable credits. It is further

ORDERED that the effective date for implementing the base rate increase is the first billing cycle in July 2009. It is further

ORDERED that starting with the first billing cycle in June 2009, PEF shall include bill inserts to notify its customers of the base rate increase. It is further

ORDERED that PEF shall provide our staff a copy of the bill insert for prior review. It is further

ORDERED that if the commercial operation of the Project is delayed from the projected June 1, 2009, starting date, the effective date shall be moved to the first billing cycle 30 days following the commercial operation in-service date. It is further

ORDERED that a cumulative corporate undertaking of \$69.5 million is acceptable. It is further


ORDERED that the tariff shall remain in effect with any revenues held subject to refund, pending review in the base rate proceeding in Docket No. 090079-EI. It is further

ORDERED that the provisions of this Order, issued as proposed agency action, shall become final and effective upon the issuance of a Consummating Order unless an appropriate petition, in the form provided by Rule 28-106.201, Florida Administrative Code, is received by the Commission Clerk, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, by the close of business on the date set forth in the "Notice of Further Proceedings" attached hereto. It is further

ORDERED that in the interest of administrative efficiency and given the congruence between the issues and parties in the two dockets, this docket shall be consolidated with Docket No. 090079-EI. It is further

ORDERED that this docket shall remain open pending our final action on Progress Energy Florida, Inc.'s requested rate increase.

By ORDER of the Florida Public Service Commission this 12th day of June, 2009.



ANN COLE
Commission Clerk

(S E A L)

KEF

DISSENT BY: COMMISSIONER ARGENZIANO

COMMISSIONER ARGENZIANO dissents without opinion.

NOTICE OF FURTHER PROCEEDINGS

The Florida Public Service Commission is required by Section 120.569(1), Florida Statutes, to notify parties of any administrative hearing or judicial review of Commission orders that is available under Sections 120.57 or 120.68, Florida Statutes, as well as the procedures and time limits that apply. This notice should not be construed to mean all requests for an administrative hearing or judicial review will be granted or result in the relief sought.

Mediation may be available on a case-by-case basis. If mediation is conducted, it does not affect a substantially interested person's right to a hearing.

As identified in the body of this order, our action regarding our approval of Progress Energy Florida, Inc.'s request for a limited proceeding for the Bartow Repowering Project and finding it appropriate pursuant to Order No. PSC-05-0945-S-EI, is preliminary in nature. Any person whose substantial interests are affected by the action proposed by this order may file a petition for a formal proceeding, in the form provided by Rule 28-106.201, Florida Administrative Code. This petition must be received by the Office of Commission Clerk, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, by the close of business on July 3, 2009. If such a petition is filed, mediation may be available on a case-by-case basis. If mediation is conducted, it does not affect a substantially interested person's right to a hearing. In the absence of such a petition, this order shall become effective and final upon the issuance of a Consummating Order.

The Commission's decision on this tariff is interim in nature and will become final, unless a person whose substantial interests are affected by the proposed action files a petition for a formal proceeding, in the form provided by Rule 28-106.201, Florida Administrative Code. This petition must be received by the Office of Commission Clerk, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, by the close of business on July 3, 2009.

In the absence of such a petition, this Order shall become final and effective upon the issuance of a Consummating Order.

Any objection or protest filed in this docket before the issuance date of this order is considered abandoned unless it satisfies the foregoing conditions and is renewed within the specified protest period.

Any party adversely affected by the consolidation of Docket Nos. 090079-EI and 090144-EI, which is preliminary, procedural or intermediate in nature, may request: (1) reconsideration within 10 days pursuant to Rule 25-22.0376, Florida Administrative Code; or (2) judicial review by the Florida Supreme Court, in the case of an electric, gas or telephone utility, or the First District Court of Appeal, in the case of a water or wastewater utility. A motion for

reconsideration shall be filed with the Office of Commission Clerk, in the form prescribed by Rule 25-22.0376, Florida Administrative Code. Judicial review of a preliminary, procedural or intermediate ruling or order is available if review of the final action will not provide an adequate remedy. Such review may be requested from the appropriate court, as described above, pursuant to Rule 9.100, Florida Rules of Appellate Procedure.