

# Hopping Green & Sams

Attorneys and Counselors

October 5, 2005

**BY HAND-DELIVERY**

Blanca Bayó  
Director, Division of Commission Clerk  
Florida Public Service Commission  
2540 Shumard Oak Boulevard  
Tallahassee, FL 32399

Re: Docket No. 050001-EI

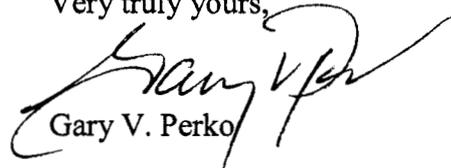
Dear Ms. Bayó:

Enclosed for filing on behalf of Progress Energy Florida, Inc., (PEF), are the original and fifteen copies of PEF's Response in Opposition to "OPC's Motion to Establish a Separate 'Spin-off' Docket to Examine Certain Coal Purchase Transactions Between Progress Energy Florida and its Affiliate," along with a diskette containing the pleading in Word format.

By copy of this letter, I am providing a copy of the pleading to all parties in this docket.

Please stamp and return the enclosed extra copy of this filing. If you have any questions regarding this filing, please give me a call at 425-2359.

Very truly yours,



Gary V. Perko

Counsel for PROGRESS ENERGY FLORIDA, INC.

Enclosures

cc: Certificate of Service

DOCUMENT NUMBER-DATE

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**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY, on behalf of Progress Energy Florida, Inc.'s Response in Opposition to "OPC's Motion to Establish a Separate 'Spin-off' Docket to Examine Certain Coal Purchase Transactions Between Progress Energy Florida and its Affiliate" in Docket No. 050001-EI have been furnished by hand-delivery (\*) or regular U.S. mail to the following this 5<sup>th</sup> day of October, 2005.

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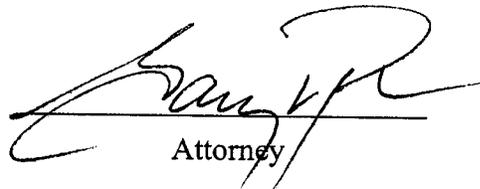
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**BEFORE THE PUBLIC SERVICE COMMISSION**

In re: Fuel and purchased power cost recovery  
clause with generating performance incentive  
factor.

Docket No. 050001-EI

Dated: October 5, 2005

**PROGRESS ENERGY FLORIDA'S RESPONSE IN  
OPPOSITION TO OPC'S MOTION TO ESTABLISH  
A SEPARATE "SPIN-OFF" DOCKET**

Progress Energy Florida, Inc. ("PEF" or the "Company"), by and through undersigned counsel and pursuant to Rule 28-106.204(1), Florida Administrative Code, hereby responds in opposition to "OPC's Motion to Establish a Separate 'Spin-off' Docket to Examine Certain Coal Purchase Transactions Between Progress Energy Florida and its Affiliate" ("OPC Motion") filed on or about September 30, 2004:

1. OPC cites no legitimate basis for creating a separate "spin-off" docket to examine PEF's coal purchase transactions with Progress Fuels Corporation ("PFC"). Indeed, the only grounds cited by OPC is a purported need to conduct discovery and analysis to evaluate differences in coal prices paid to PFC and other coal suppliers, as reported on PEF's 423 Fuel Reports. OPC fails to acknowledge that PEF has filed its 423 Fuel Reports with the Commission on a monthly basis throughout the year and that OPC could have conducted discovery at any time during the year in this ongoing docket to inquire about the basis for the variation in coal prices. However, OPC failed to avail itself of that opportunity. OPC's own delay is not a basis for creating a separate "spin-off" docket.

2. The two orders cited by OPC in which the Commission spun off separate dockets are distinguishable because they involved complex or unusual issues. For example, when the Commission established a separate docket to address TECO's waterborne coal transportation

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arrangements, it concluded that the parties needed additional time to evaluate a 102-page confidential exhibit that TECO's witness sponsored in supplemental testimony submitted almost two weeks after the deadline for filing projection testimony. See Order No. 03-1359-PCO-EI (Dec. 1, 2003). By contrast, as noted above, OPC could have requested PEF's 423 Fuel Reports and additional discovery it deemed necessary at any point throughout the year but failed to do so until only recently. The other case cited by OPC was unusual because it involved the proposed elimination of longstanding market proxies for the various components of PEF's costs for waterborne coal transportation services. See Order No. 03-1461-FOF-EI (Dec. 22, 2003). No such unusual issue is presented in the current docket.

3. OPC's Motion ignores a more recent order that is more analogous to the current docket. In that Order, the Commission refused to establish a "spin-off" docket associated with an FPL Unit Power Sales Agreement because, among other things, the issues were not complex and recovery of purchase power costs was the purpose of the ongoing fuel and purchase power clause proceeding. See Order No. 04-1018-PCO-EI (Oct. 19, 2004).

4. There is nothing complex, unusual or, as OPC alleges, "complicated" about the issue raised by OPC in this proceeding. As PEF explained in response to OPC's recent interrogatories (timely served after the OPC Motion), the purchases referenced by OPC were the result of a competitive bidding process and the differences in prices paid to PFC and other suppliers were due to the fact that the purchases were made at different times under different market conditions. Issues of that nature are routinely addressed in this docket which is designed specifically to review the reasonableness and prudence of utilities' fuel costs.

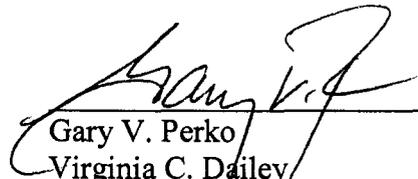
5. OPC's argument that "the schedule in Docket No. 050001-EI simply does not afford OPC an adequate opportunity to develop relevant facts," *id.*, is meritless because it ignores the first eight months of 2005 when OPC did not conduct the discovery it now suggests it desires. Establishing a separate docket as OPC requests would only reward OPC for sitting on its rights and then claiming insufficient time at the eleventh hour, and would result in an unjustified delay in the resolution of this matter and in additional costs for PEF and the Commission.

WHEREFORE, Progress Energy respectfully requests that the Commission deny "OPC's Motion to Establish a Separate 'Spin-off' Docket to Examine Certain Coal Purchase Transactions Between Progress Energy Florida and its Affiliate."

RESPECTFULLY SUBMITTED this 5<sup>th</sup> day of October, 2005

HOPPING GREEN & SAMS, P.A.

By:

  
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