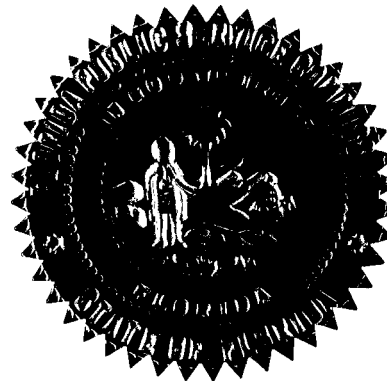


BEFORE THE
FLORIDA PUBLIC SERVICE COMMISSION

DOCKET NO. 050316-EI

In the Matter of:

PETITION FOR APPROVAL OF INTEGRATED
CLEAN AIR REGULATORY COMPLIANCE
PROGRAM FOR COST RECOVERY THROUGH
ENVIRONMENTAL COST RECOVERY CLAUSE,
BY PROGRESS ENERGY FLORIDA, INC.



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PROCEEDINGS: AGENDA CONFERENCE
ITEM NO. 11

BEFORE: CHAIRMAN BRAULIO L. BAEZ
 COMMISSIONER J. TERRY DEASON
 COMMISSIONER RUDOLPH "RUDY" BRADLEY
 COMMISSIONER LISA POLAK EDGAR

DATE: Tuesday, October 4, 2005

PLACE: Betty Easley Conference Center
 Room 148
 4075 Esplanade Way
 Tallahassee, Florida

REPORTED BY: JANE FAUROT, RPR
 Official FPSC Hearings Reporter
 (850) 413-6732

1 APPEARANCES:

2 GARY V. PERKO, ESQUIRE, and R. ALEXANDER GLENN,
3 representing Progress Energy Florida, Inc.

4 JOE MCGLOTHLIN, ESQUIRE, Office of Public
5 Counsel, representing the Citizens of the State of Florida.

6 MICHAEL COOKE, Director, Division of Air
7 Resources, representing the Department of Environmental
8 Protection.

9 JIM BREMAN and MARY ANNE HELTON, ESQUIRE,
10 representing the Florida Public Service Commission Staff.

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P R O C E E D I N G S

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CHAIRMAN BAEZ: Item 11.

MR. BREMAN: Good morning, Commissioners. My name is Jim Breman, one of your Commission technical staff.

Item 11 is Progress' request to include the Clean Air Act Interstate Rule and Clean Air Mercury Rule compliance costs in the environmental cost-recovery clause.

Staff recommends that the petition should be approved conditionally. Staff believes prudently incurred costs for Phase I of these new environmental rules from EPA are eligible for recovery through the clause. At this time it is premature to address Phase II parts of these rules or costs associated with them because the company has not identified such costs.

Challenges to the new EPA rules have been filed. Nevertheless, the rules remain in effect until a stay is granted. Progress has informed staff that it supports staff's recommendation and is here to answer questions.

The Office of Public Counsel and the Florida Retail Federation have filed interventions. I believe they are here also to make some comments to the Commission. Mr. Michael Cooke to my immediate right, he is the Director of the Division of Air Resources at the DEP, he is here simply to provide answers to any questions the Commission may have.

CHAIRMAN BAEZ: Mr. Cooke, thank you for being here.

Mr. Glenn, are you all here just to answer questions?

1 MR. GLENN: That's correct.

2 CHAIRMAN BAEZ: We will take Mr. McGlothlin first.

3 MR. MCGLOTHLIN: Good morning, Commissioners. Joe
4 McGlothlin of the Office of Public Counsel.

5 This docket is unusual. It is unusual in part
6 because of the sheer magnitude of the costs potentially at
7 issue which are large even by the standards of environmental
8 compliance. But more importantly for today's purposes, it's
9 unusual because of the degree of uncertainty that attaches to
10 Progress Energy's petition. And the question for you today is
11 given that uncertainty, what level of approval is appropriate
12 today.

13 And I would like to refer you by way of quick
14 background to a couple of sentences in Progress Energy's
15 petition. At Page 1, the company says it hereby petitions for
16 approval of cost-recovery of integrated environmental
17 compliance program necessitated by a new Clean Air Interstate
18 Rule and a new Clean Air Mercury Rule adopted by the EPA.

19 Now, the word program denotes to me, and I will bet
20 it denotes to you, a concrete specific proposal. But on Page 2
21 of the same petition, the company says it seeks approval to
22 recover through the clause the costs incurred after the filing
23 of this petition for development and implementation of an
24 integrated strategy for complying with those rules. So it is
25 clear that at this point we have not a specific concrete

1 proposal but a proposal to develop a strategy. And that is no
2 criticism of the company, because the requirements that may be
3 imposed on the company are not clear at this point.

4 And one reason I came today is because I believe
5 while our office is not far apart from the staff's
6 recommendation, an important clarification is needed. At Page
7 2 of the staff recommendation, staff says PEF's petition
8 includes projected expenses associated with Phase I of CAIR and
9 CAM totaling \$1,120,000,000 in capital additions and \$34
10 million in annual operating and maintenance expenses by 2014.
11 Those are the identified estimated costs associated with Phase
12 I, which staff says is the subject of their recommendation.
13 And I was concerned that this could be construed as a
14 recommendation that the Commission sign off on those dollars.
15 I have since compared notes with staff counsel, and it's my
16 understanding that was not the intent, but I think it is very
17 important that the Commission clarify the scope of its decision
18 today.

19 And with respect to the degree of uncertainty that I
20 mentioned a moment ago, the premise underlying the Clean Air
21 Interstate Rule is the concept that states distant from a
22 particular nonattainment area may contribute to the
23 nonattainment, even though they are physically removed as a
24 consequence of what is described as downwind effects of the
25 pollution occurring in those other states.

1 COMMISSIONER BRADLEY: Mr. McGlothlin, say that
2 again, please.

3 MR. MCGLOTHLIN: Yes, sir. And let's be specific as
4 to what is involved here. One of the concepts of the federal
5 regulatory programs is to identify those areas which have
6 failed at this point to attain the standards set for them
7 called nonattainment areas. For example, one such
8 nonattainment area is Fulton County, Georgia. And in addition
9 to the requirements imposed on the state of Georgia, this new
10 rule would require states distant from Georgia, including
11 Florida, to undertake additional control measures because EPA's
12 modeling indicates that sources in Florida contribute to the
13 nonattainment status in Georgia by virtue of what it calls
14 downwind effects; that is, emissions traveling across the state
15 line into Florida.

16 And I raise that because the CAIR rule is the subject
17 of petitions for reconsideration as well as court challenges.
18 And one of the matters being asserted by those challengers is
19 that some or all of Florida should not be captured in this
20 approach because of the issue of whether Florida, or at least
21 South Florida, truly is contributing to that nonattainment
22 status in Georgia. And those are pending. Both the
23 reconsideration is pending and the court challenge is pending.

24 The overall design of this federal program includes
25 the implementation of a state enforcement rule, which is not

1 yet in place, as well as the implementation of a backup or fall
2 back federal implementation rule which is not yet in place. So
3 there are some vagaries involved in all of this.

4 That being the case, it appears to us that with
5 respect to what the Commission is in a position to say today,
6 it is as follows: If and when these measures have the effect
7 of imposing regulatory requirements on Progress Energy, at that
8 point the costs, once proven to be prudent and reasonable, will
9 satisfy the criteria of the Florida Statute and will then
10 become recoverable under the ECCR. I think that is all you are
11 in a position to say today. And so for that reason, I hope
12 that as you vote on the staff recommendation, you would take
13 pains to clarify that even though the staff alludes to some big
14 dollars, you are reserving jurisdiction until such time as,
15 first of all, the requirements are firmly in place, and
16 secondly, the efforts of Progress Energy have been demonstrated
17 to be the prudent and most cost-effective efforts designed to
18 meet those requirements, whatever they are.

19 The other matter I ask you to consider is this:
20 Staff recommends that after this vote that the docket be
21 closed. I don't think the Commission is in a position to do
22 that yet because of the limited nature of the approval it is in
23 a position to give. And at one point in the petition, Progress
24 Energy refers to some results of some computer modeling it has
25 undertaken to identify and evaluate the options available to

1 it. Again, it is premature to decide that specific programs or
2 specific measures are the appropriate ones.

3 We have recently issued some discovery designed to
4 require Progress Energy to provide the fundamental modeling
5 assumptions and the comparisons of the modeling it has
6 performed to date. But beyond that, it appears to me that at
7 some point in time the applicable program will take shape and
8 will be the subject of additional Commission review. And it
9 appears to me illogical that in terms of the procedural
10 vehicle, this docket is the appropriate place for that to
11 happen, as opposed to being thrown into what is already a
12 compressed -- typically compressed time frame when
13 cost-recovery is sought. So in addition to the clarification
14 of the scope of your approval, I ask you to keep this docket
15 open for the follow-through that is sure to happen.

16 CHAIRMAN BAEZ: Questions of Mr. McGlothlin?

17 Go ahead, sir.

18 MR. PERKO: Good morning, Commissioner. My name is
19 Gary Perko on behalf of Progress Energy. With me is Alex
20 Glenn, Deputy General Counsel of Progress Energy Services. I
21 would just like to point out that there is such less
22 uncertainty than Mr. McGlothlin would have you believe. There
23 are two rules, federal rules currently on the books that
24 effectively place caps on SO₂, nitrogen oxide, and mercury
25 emissions in Florida. And those caps are effective in very

1 ambitious time frames; 2009 for NOx, 2014 for SO2. I'm sorry,
2 2010 for SO2.

3 Given those time frames, the company has done a
4 significant amount of work to determine what it needs to do to
5 do its part to ensure that those caps are met. That is
6 reflected in our petition. In addition to the strategy
7 development work that Mr. McGlothlin has referenced, our
8 petition referenced specific projects, selective catalytic
9 reduction projects, FGD projects that we believe are necessary
10 in order to comply with those emissions caps within the
11 ambitious time frames set forth in the federal rules.

12 The issue before you today is whether the program
13 that Progress has set forth before you is recoverable under the
14 ECRC. I think that most of the issues that Mr. McGlothlin has
15 raised go to the reasonableness and prudence of the cost of
16 that program. I would suggest to you that that is not a
17 question before you today, that is something that is addressed
18 in the annual ECRC proceedings every year as Progress presents
19 those costs to the Commission for review. OPC and the other
20 parties involved in those dockets will have an opportunity to
21 participate at that time.

22 Furthermore, given the fact that there are some other
23 regulatory actions that need to be taken with regard to the
24 CAIR rule, I think staff has come up with a great
25 recommendation for Progress to sit down with the parties to

1 update them on where the program stands, where the regulatory
2 -- where the rules stand during points in the year so everyone
3 is kept abreast of what is going on. So at the time of next
4 year's ECRC docket there will be no uncertainty of where things
5 stand.

6 As far as keeping the docket open, I'm not sure what
7 that would serve. I think the Commission has recognized twice
8 today that in PAA dockets the typical procedure is to issue a
9 PAA order and then close the docket if there is no protest. In
10 this case, I think it is particularly appropriate to close the
11 docket to get certainty on the issue of whether this program is
12 approvable, recognizing that the reasonableness and prudence of
13 the costs for the program will be reviewed annually as they are
14 presented in this docket. So unless the Commission has any
15 other questions --

16 CHAIRMAN BAEZ: Commissioners, questions?

17 Mr. McGlothlin, after hearing Mr. Perko, outside of
18 the closing of the docket recommendation, do you all see some
19 common ground there? I mean, I'm sort of hearing it, or at
20 least hearing his confirmation that the actual amounts are not
21 what is before us today, and I seem to recall that was one of
22 your points. I mean, are we in agreement or --

23 MR. MCGLOTHLIN: I don't think we are in agreement, I
24 think we're where we walked in today.

25 CHAIRMAN BAEZ: Okay. Help me understand what --

1 MR. MCGLOTHLIN: Mr. Perko alludes to the program
2 again, and he also refers specifically to flue gas
3 desulphurization and NOx reduction programs, but those two
4 thoughts are the culmination of a process of comparing options
5 that require some assumptions. And the assumptions require the
6 finality of the requirements in place as well as knowledge of
7 such things as the value of the allowances under the cap and
8 trade program, if the state chooses to go that route.

9 And so what I believe I hear is a request that you
10 approve the choices of FGD and selective catalytic conversion
11 at a point in time when not enough information is before you to
12 enable you to determine that that is the cost-effective means
13 of going forward.

14 Now, I understand the need of the company to begin
15 some analysis and some engineering designs. I understand that
16 the time frame they are confronted with presents that type of
17 difficulty for them, but I do think that they are overreaching
18 in terms of the degree of the blessing they are looking from
19 you today. And I think if you were to tell them that in the
20 event these requirements are made final you will at that time
21 entertain proof of the most cost-effective means of complying
22 with them.

23 CHAIRMAN BAEZ: Mr. Perko, aside from the fact that
24 you disagree with Mr. McGlothlin, is his characterization of
25 what you're seeking accurate? I mean, is it your position that

1 this Commission by its vote would be approving, actually be
2 approving alternatives or the company's choice of particular
3 alternatives at this particular point?

4 MR. PERKO: My view of it, Commissioner, is that the
5 Commission would be approving the recoverability, not actual
6 recovery, but the recoverability of costs to comply with the
7 CAIR rule. Now, the prudence in expenditures, the actual costs
8 that are incurred under that program would be approved in the
9 ECRC proceeding as they are submitted every year.

10 CHAIRMAN BAEZ: But Mr. McGlothlin mentioned
11 something, and I forget what the particular compliance
12 alternatives that the company raises, FGD and the SCR, in your
13 estimation we would be approving this option for you today?

14 MR. PERKO: Well, we have actually submitted the
15 costs -- the specific programs and the associated costs in the
16 ECRC docket this year, so it will be a matter that is addressed
17 in that docket.

18 CHAIRMAN BAEZ: So this vote is as shallow as you
19 represent?

20 MR. PERKO: Well, I don't know if it is shallow, Your
21 Honor, because this is a significant issue.

22 CHAIRMAN BAEZ: I don't mean to belittle the
23 significance, but you can see that there is some difference as
24 to what the extent really of it is.

25 MR. PERKO: I understand.

1 CHAIRMAN BAEZ: And you are representing, if I'm
2 understanding what you are saying, that the FGD and FCR
3 alternatives, or the case for their prudency gets made at the
4 ECRC level or in the ECRC docket.

5 MR. PERKO: I think the specifics of that or the
6 prudence of those choices are to be addressed in the ECRC
7 docket.

8 CHAIRMAN BAEZ: So what we are left with here is
9 merely a determination by the Commission that those efforts, or
10 similar efforts, or alternative efforts, generally speaking,
11 are of the type that will be recoverable as efforts to comply
12 with the federal regulations as they may be finalized in the
13 future. That to me is, relatively speaking, shallower than
14 saying, you know, scrubbers are okay today. Am I understanding
15 what you are --

16 MR. PERKO: I believe so.

17 CHAIRMAN BAEZ: Mr. McGlothlin, why is that not your
18 understanding?

19 MR. MCGLOTHLIN: That is not the way I understood the
20 petition. If all the company is requesting is a determination
21 that whatever measures it proves up at some different venue are
22 required and are the cost-effective choices to meet with the
23 ultimate requirements, then that's, I think, consistent with
24 the scope I suggested to you earlier.

25 I will raise, however, that in my own belief the

1 existing schedule for the ECCR is going to be inadequate for
2 the Commission and the parties to develop the information that
3 would enable the Commission to make a decision in November as
4 to the appropriate choices to be made in that regard.

5 CHAIRMAN BAEZ: Commissioner Bradley, I know you have
6 a question, but if you will just bear with me --

7 COMMISSIONER BRADLEY: Uh-huh.

8 CHAIRMAN BAEZ: -- another second, I would be
9 interested in hearing Mr. Breman's take on all of this in terms
10 of what you feel your recommendation does or what you feel our
11 decision accomplishes.

12 MR. BREMAN: I feel very comfortable with what legal
13 staff is going to say on that matter.

14 CHAIRMAN BAEZ: I'm sure you do, and I'm sorry I
15 didn't recognize it earlier.

16 COMMISSIONER EDGAR: Mr. Chairman, I need to break
17 in.

18 CHAIRMAN BAEZ: Commissioner.

19 COMMISSIONER EDGAR: Thank you. And I, also, am
20 anxious to hear what our legal staff has to say. But before we
21 do that, Mr. McGlothlin, I'm not sure I understood your last
22 statement, and I want to make sure I'm understanding that so I
23 understand our attorneys comments on your statement.

24 Did I hear you to say that the ECRC review in
25 November, that you believe that will be inadequate to help us?

1 MR. MCGLOTHLIN: In terms of the time available for
2 collecting and evaluating all of the information that would be
3 needed to determine the more cost-effective means of complying
4 with whatever requirements ultimately are imposed on the
5 company, I doubt that the parties, and I doubt the Commission
6 would be in a position in November to make that determination.

7 I say that because it occurs to me that keeping this
8 docket open may yet have the good function of being the
9 procedural vehicle for that data gathering and that ultimate
10 determination. If not this, then perhaps a deferral or
11 spin-off in that other docket.

12 CHAIRMAN BAEZ: And while we are at that pause,
13 Commissioner Bradley, if you want to get your question out,
14 and, Ms. Helton, if you will just bear with us, and then you
15 can go ahead and sum it up for us. Go ahead.

16 COMMISSIONER BRADLEY: I have a question of staff.
17 The Environmental Cost-Recovery Clause, it deals with
18 environmental concerns that basically have been mandated by --
19 what we're discussing today has been mandated by two federal
20 rules establishing limits on the air emissions. And the new
21 rules are the Clean Air Interstate Rule, I think which Mr.
22 McGlothlin alluded to, which limits the emissions of sulfur
23 dioxide and nitrous oxide and the Clean Air Mercury Rule which
24 limits the emissions of mercury, am I pretty much on target?

25 MS. HELTON: Yes, sir.

1 COMMISSIONER BRADLEY: Okay. What happens if the
2 company decides to ignore this rule?

3 MS. HELTON: That might be a question that is better
4 answered by Mr. Cooke.

5 MR. COOKE: Ultimately these are enforceable
6 requirements, and we would be able to penalize the company
7 either through fines or seek court intervention to impose
8 injunctions to require steps to be taken. So we could enforce
9 these rules on them.

10 COMMISSIONER BRADLEY: So what we are confronted with
11 here is a situation where the company has to do something about
12 these emissions, am I correct, or else we are going to impose a
13 fine or sanction them in some other manner, is that correct?

14 MR. COOKE: What the Clean Air Interstate Rule does
15 is it imposes on the state of Florida a cap on emissions. And
16 that cap was set by EPA, the federal agency. We, in turn, are
17 given some options as to how to achieve that cap within the
18 state. The options, the uncertainty involved in that process
19 is not as great as it may seem. Because the way EPA set the
20 cap was to go back and look at all of the emissions from the
21 electric generating units in the state and, essentially, work
22 up from that level to where they want -- or work down where
23 they want the cap to be.

24 We are given some discretion as to how to allocate
25 those to the individual plants. But particularly with respect

1 to sulfur dioxides, for example, the way the final CAIR rule
2 was imposed, it is based on an existing acid rain program. And
3 there is a great deal of certainty as to what the utilities
4 will have to do with regard to SO2 emissions, for example,
5 based on that program.

6 The only choice we would have would be to essentially
7 not allow those EGUs to participate in cap and trade that is
8 available under that program. So we would be taking them out
9 of an existing national program, which we would not choose to
10 do.

11 There is some uncertainty, but it is not as great as
12 it appears, perhaps, at first blush. And once our final rule
13 is in place, or if we do not achieve a final rule in terms of
14 implementation specifics about allocations, EPA imposes one, a
15 federal implementation rule that they have said will be based
16 on the model rule, the CAIR rule that already is final. So
17 there, perhaps, is not as great an amount of uncertainty as
18 appears at first blush.

19 CHAIRMAN BAEZ: Ms. Helton, you were going to address
20 a previous question.

21 MS. HELTON: You all had asked what is the staff's
22 intent behind our recommendation. And our intent was to show
23 that or to recommend to you that you find that Progress had met
24 the first hurdle that must be met in Section 366.8255, which is
25 the statute that establishes the criteria for the environmental

1 cost-recovery clause, and that first hurdle is that there must
2 be some kind of environmental requirement, be it federal,
3 state, or local, with which the company is required to comply.

4 And after staff analyzed the rules at issue here, our
5 analysis showed that the federal rules are final. They are
6 rules that the company must now be complying with, both the
7 federal government has said, and the state government, our
8 sister agency has said that in order for Progress to comply
9 with these rules, they have to start doing something now.

10 Progress, I think, is in a Catch-22 situation. It
11 finds itself with federal rules that it has to comply with, but
12 there is not yet a state implementation plan in place. So in
13 staff's estimation it was a reasonable thing to do, and come to
14 the Commission and said we have a federal rule that is final,
15 we have to comply with it, are those costs the type of costs
16 that are eligible for recovery through the clause.

17 Staff's recommendation is, yes, they are. Staff in
18 no way intended to bless the means by which the utility
19 complies with the requirements nor the costs associated with
20 those. As has been discussed this morning, those are matters
21 for the ECRC docket itself.

22 CHAIRMAN BAEZ: So it starts sounding like a
23 declaratory statement of sorts. I mean --

24 MS. HELTON: Well, it is a blessing.

25 CHAIRMAN BAEZ: We see it, and this is the kind of

1 thing that our -- secondly, as to what the appropriate docket
2 is, you have had some discussions that the ECRC docket for
3 November is probably too compressed a time line in order to
4 settle, with any degree of certainty, those issues that we are
5 not deciding today. I mean, the more concrete issues, if you
6 will.

7 MS. HELTON: And that may be the case. Staff is not
8 making a recommendation to that one way or the other. That is
9 a matter that, you know, should be raised in that docket.

10 CHAIRMAN BAEZ: And, now explain to me lastly, this
11 is a PAA.

12 MS. HELTON: Yes, sir.

13 CHAIRMAN BAEZ: And not to steal Commissioner
14 Deason's old lines, but, I guess, obviously it is a PAA, it is
15 protestable and -- or subject to protest. That sounds a lot
16 neater, doesn't it? What is the effect of a protest? What
17 would you anticipate happening in a functional -- as a
18 practical matter?

19 MS. HELTON: Well, the legal effect of a protest of a
20 proposed agency action order is that the order itself becomes a
21 nullity; it was as if the Commission had not entered it. So
22 there would be --

23 CHAIRMAN BAEZ: At least parts of the order anyway.

24 MS. HELTON: Well, it depends on what would be
25 protested. What is not protested, the statute says that you

1 deem that stipulated. So that would depend on what was
2 protested.

3 CHAIRMAN BAEZ: But as a practical matter, would it
4 open up -- I guess it would start a hearing process, correct?

5 MS. HELTON: Typically, yes, it would start some kind
6 of a hearing process.

7 CHAIRMAN BAEZ: Some type of a hearing process, and I
8 guess I'm unclear as to what exactly would fall into that. And
9 I know that it depends on what is protested clearly, but we
10 don't have a whole lot of questions here that are getting
11 answered, so I think I can do the math as to what would fall
12 within a protest, generally speaking. Would that not have the
13 practical effect of nullifying this consideration on a November
14 time frame? I'm trying to understand what the effect is.

15 MS. HELTON: It would probably be too late to roll
16 the protest, the hearing part of the protest into the November
17 hearing.

18 MR. BREMAN: We did some math and if the order gets
19 issued real promptly, like tomorrow, the protest period might
20 expire before or just at the November hearing for the clause,
21 the environmental cost-recovery clause.

22 CHAIRMAN BAEZ: So that even with a protest, it would
23 be staff's intent to try and roll in -- again, given your tight
24 time frames, but try to roll in any protest of the PAA within
25 the November time frame?

1 MR. BREMAN: I have no set rules. I will work with
2 the parties anyway you want and I will respond to the
3 Commission.

4 CHAIRMAN BAEZ: No, I'm not expressing a desire one
5 way or another, I'm just trying to understand --

6 MS. HELTON: I don't think that we have come to that
7 conclusion. A lot of it depends on whether there is a protest,
8 what is at issue if there is a protest, what the parties feel
9 comfortable going forward with, and the prehearing officer and
10 the Commissioners in the 07 hearing.

11 MR. PERKO: Mr. Chairman, if I may make some brief
12 remarks on those issues.

13 CHAIRMAN BAEZ: Mr. Perko, yes.

14 MR. PERKO: In the past in situations such as this
15 where there has been a PAA proceeding pending at the time or
16 close up to the ECRC proceeding, the Commission has, on
17 occasion, consolidated those dockets. So I think if we run
18 into that situation, the parties could discuss that and
19 determine whether that is the best way to go.

20 Secondly, regarding Mr. McGlothlin's suggestion that
21 the docket remain open so that the parties have additional time
22 to review, I would just like to point out that this petition
23 was filed in May, almost five months ago, and we were hopeful
24 that the Commission's vote would come sooner, but due to all
25 the matters on your schedule that just wasn't possible. But in

1 that petition we specifically pointed out that regardless of
2 what DEP does, we are likely going to have to install FGD and
3 FCR at Crystal River. And we stated in that petition that we
4 would be including 2005 costs in our estimated actual testimony
5 in the ECRC docket, and projected 2006 costs in the ECRC
6 docket. We have, in fact, done that.

7 The parties have been aware of this petition on the
8 books since May. We have had our testimony in since August and
9 September, so I would suggest to you that in the normal course
10 of the ECRC proceeding there was sufficient time to address
11 these issues.

12 CHAIRMAN BAEZ: Mr. McGlothlin.

13 MR. MCGLOTHLIN: Very briefly. First of all, I have
14 received some degree of comfort from both the company's
15 characterization of its intent underlying the petition and
16 staff's clarification of the scope of the approval it brought
17 to you. And if the PAA takes that form, I don't think our
18 office is very interested in filing a protest if a means can be
19 found either in the existing ECCR docket or, if warranted, a
20 spinout that would allow us and the Commission to get arms
21 around the proof that has to accompany the assertion that a
22 particular means is a cost-effective way of going forward.
23 Even though the petition was filed in May, given the
24 uncertainty of the requirements themselves, I don't think the
25 company is any closer to being able to provide that degree of

1 firm proof than it was months ago.

2 CHAIRMAN BAEZ: But you are at least comfortable that
3 that subsequent avenue of addressing whatever questions remain
4 is at least -- you have some input and some control over or
5 certainly some participation clearly over that subsequent or
6 that remaining process?

7 MR. MCGLOTHLIN: I would say that it doesn't have to
8 be this docket. If it is not this docket, then the ECCR docket
9 if the Commission accommodates by whatever extension or
10 spin-off or other appropriate means the need for additional
11 activity.

12 CHAIRMAN BAEZ: But that those discussions still can
13 be had.

14 MR. MCGLOTHLIN: Yes, sir.

15 COMMISSIONER BRADLEY: Mr. Chairman.

16 CHAIRMAN BAEZ: Commissioner Bradley.

17 COMMISSIONER BRADLEY: Who are the intervenors in
18 this docket?

19 MS. HELTON: In this docket, the Office of Public
20 Counsel and the Florida Retail Federation have petitioned to
21 intervene in this docket. In the environmental cost-recovery
22 docket, FIPUG is an intervenor, and then OPC is an intervenor,
23 and is also in an intervenor in that docket, as well.

24 COMMISSIONER BRADLEY: Okay. Who is representing the
25 retail federation?

1 MS. HELTON: Mr. Wright filed the petition to
2 intervene. I don't know.

3 MR. BREMAN: I haven't seen him today.

4 COMMISSIONER BRADLEY: And I'll tell you why I'm
5 asking that question. It seems like we are arriving at an
6 understanding as to what the intent is. By the mere fact that
7 the other intervenor is not here, does that -- how does that
8 effect their -- I mean, we don't know what is going to happen,
9 is that they are going to file a protest.

10 CHAIRMAN BAEZ: I don't think anything that has been
11 understood precludes anyone from filing a protest in this
12 posture.

13 COMMISSIONER BRADLEY: Right. But I think it is just
14 kind of odd for an intervenor to intervene and not be here so
15 that we can --

16 CHAIRMAN BAEZ: I would agree.

17 COMMISSIONER BRADLEY: And I wouldn't want their
18 absence to preserve their ability to control this docket,
19 because OPC represents, in my opinion, all the possible
20 intervenors. To make a long story short, I just would be of
21 the opinion that if OPC agrees or arrives at a conclusion that
22 is satisfactory, that that would be binding. And by the mere
23 fact that the other intervenor is not here, that pretty much
24 states that they don't have an opinion and that they agree in
25 my opinion.

1 CHAIRMAN BAEZ: Commissioner Bradley, as attractive
2 as that proposition sounds, I'm not sure we can get there from
3 here. But in any case, Commissioner, it is a great try,
4 though.

5 COMMISSIONER BRADLEY: Well, not being here implies
6 that they have agreed to allow OPC to represent their concern.

7 CHAIRMAN BAEZ: Commissioners, if there are no other
8 questions, is there a motion?

9 COMMISSIONER EDGAR: Mr. Chairman, before we move
10 forward on the procedural, could I come back and just ask one
11 or two very basic questions?

12 CHAIRMAN BAEZ: By all means.

13 COMMISSIONER EDGAR: Director Cooke, thank you for
14 joining us.

15 MR. COOKE: Thank you.

16 COMMISSIONER EDGAR: At the bottom of the information
17 that is before us on Page 3 of our agenda item it says that
18 Progress' generating units are being affected by this proposed
19 EPA and state action because there are few pollution controls
20 for SOx and NOx installed on these particular generating units,
21 the generating units of Progress. Why is that?

22 MR. COOKE: Most of these electric generating units
23 are considered to be what are called grandfathered. They were
24 built prior to the initial Clean Air Act provisions that
25 required any sort of pollution controls. And unless they have

1 made what are called major modifications over the years that
2 trigger review and imposition of pollution controls, then they
3 are free from it.

4 COMMISSIONER EDGAR: So if these particular units had
5 done something to trigger new site review, then pollution
6 controls to address SOx and NOx would have taken place prior to
7 this?

8 MR. COOKE: That's right.

9 COMMISSIONER EDGAR: Okay. And, again --

10 MR. COOKE: And it would have been the kind of
11 controls that are being talked about here today, scrubbers and
12 SCRs.

13 COMMISSIONER EDGAR: And if these generating units
14 were to be constructed today and not already currently be in
15 existence, these same pollution controls would be required?

16 MR. COOKE: It would be a slightly different process
17 in that those would be subject to what is called best available
18 control technology as a new source, and you would look at
19 current technology at that point as opposed to retrofit
20 technology.

21 COMMISSIONER EDGAR: Thank you. And, of course, in
22 November when we consider the dockets that will come before us
23 for each of the clauses, that will be the first time that I
24 will through those reviews, and I am, of course, anxiously
25 looking forward to each of them.

1 COMMISSIONER DEASON: I'm not anxiously looking
2 forward.

3 CHAIRMAN BAEZ: Are you the prehearing officer?

4 COMMISSIONER EDGAR: No, but when the dockets come.
5 I mean, when they come before us, I haven't gone through an
6 ECRC clause or fuel clause.

7 CHAIRMAN BAEZ: Who is the lucky prehearing officer?

8 COMMISSIONER DEASON: I didn't know it was me.

9 MS. HELTON: Commissioner Bradley is currently the
10 prehearing officer.

11 CHAIRMAN BAEZ: Commissioner Bradley is the
12 prehearing officer. Then I anxiously await them, too.

13 COMMISSIONER EDGAR: To our staff, again, because I
14 have not gone through those dockets in prior years as my
15 colleagues have. Again, my understanding is the item before
16 us -- and I realize we will clarify this, but is in my mind
17 whether some of the work in order to meet the proposed federal
18 and state requirements in this instance qualifies as a new
19 activity in order to be considered for cost-recovery, and that
20 we would still, through the authority of this Commission, go
21 through our prudence review.

22 Can you describe to me a little bit about the steps
23 that our staff takes when they do those reviews for prudence
24 prior to those items coming before us?

25 MR. BREMAN: Yes, ma'am. And I will try to focus

1 specifically on the scope of the company's activities that will
2 be entertained. And as a side mark, FPL and Gulf Power, two
3 other investor-owned utilities, also are responding with some
4 proposed activities in the environmental clause. It is just
5 that Progress is a little faster. They got their petition in
6 in May, the other companies filed their petitions with the
7 testimony in the 07 docket. So we have three companies that
8 are procedurally similarly situated. The dollars for Progress
9 are substantially different.

10 We will be reviewing the reasonableness of the
11 company's planning process and the assumptions that they
12 necessarily have to make at this stage in time and assessing
13 what reasonably can be known, given all the facts that we know
14 today, the extent to which the company is responding to the
15 flexibility and the ability to address changes as they come up,
16 and to ensure that large commitment of dollars are not at risk.

17 So that is the scope of the review that is
18 essentially going to be going on right now for all three
19 companies. We will then be looking at bidding processes and
20 whether or not those competitive bids have incentives in them
21 and so forth as the equipment purchases actually occur. We
22 will pursue those avenues. That's a high level.

23 COMMISSIONER EDGAR: And we'll continue to compliment
24 our expertise by drawing upon the expertise in our other
25 environmental state agencies?

1 MR. BREMAN: We are exploring those with Mr. Cooke's
2 presence, and we will probably do a lot more of that in the
3 future, and we will probably do audits of some kind, too.

4 COMMISSIONER EDGAR: Thank you.

5 CHAIRMAN BAEZ: Commissioners, other questions or a
6 motion?

7 COMMISSIONER DEASON: Mr. Chairman, I believe that
8 Ms. Helton's answer to the question as to exactly what we are
9 doing here, I agree with that, and if she can include that in
10 the order and issue it as a PAA, that is what I move.

11 COMMISSIONER BRADLEY: Second.

12 CHAIRMAN BAEZ: Are we clear on what -- okay.

13 MS. HELTON: Yes, sir.

14 CHAIRMAN BAEZ: Thank you, Ms. Helton.

15 There is a motion and a second on both issues,
16 Commissioner?

17 COMMISSIONER DEASON: I am willing to propose that
18 this docket be closed, but that is with the understanding that
19 there is going to be ample opportunity for Public Counsel other
20 intervenors to adequately explore the continuing process under
21 which compliance is going to have to be obtained and the
22 various means and technologies and costs associated with that.

23 CHAIRMAN BAEZ: Very well. Commissioners, there is a
24 motion on all issues and a second. All those in favor say aye.

25 (Unanimous affirmative vote.)

1 CHAIRMAN BAEZ: Thank you all. Thanks to the
2 parties.

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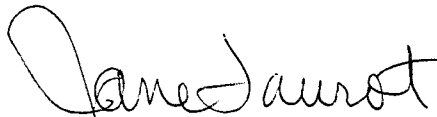
CERTIFICATE OF REPORTER

I, JANE FAUROT, RPR, Chief, Office of Hearing Reporter Services, FPSC Division of Commission Clerk and Administrative Services, do hereby certify that the foregoing proceeding was heard at the time and place herein stated.

IT IS FURTHER CERTIFIED that I stenographically reported the said proceedings; that the same has been transcribed under my direct supervision; and that this transcript constitutes a true transcription of my notes of said proceedings.

I FURTHER CERTIFY that I am not a relative, employee, attorney or counsel of any of the parties, nor am I a relative or employee of any of the parties' attorney or counsel connected with the action, nor am I financially interested in the action.

DATED THIS 10th day of October, 2005.



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