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**From:** Mike Twomey [miketwomey@talstar.com]  
**Sent:** Wednesday, September 27, 2006 4:04 PM  
**To:** Filings@psc.state.fl.us  
**Subject:** AARP electronic filing in Docket No. 060001-EI  
**Attachments:** AARP Joinder in Public Counsel's Petition in 060001 September 27, 2006.doc

**ORIGINAL**

A. Person responsible for this electronic filing:

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B. Docket No. 060001-EI Fuel and Purchased Power Cost Recovery Clause with Generating Performance Incentive Factor.

C. Document being filed on behalf of AARP.

D. There are a total of 10 pages.

E. The document attached for electronic filing is AARP's joinder in Public Counsel's petition seeking a \$143 million refund from Progress Energy and joinder in Public Counsel's memorandum in response to Progress Energy's motion to dismiss.

The parties/individuals indicated on the certificate of service are being served both electronically and by U.S. Mail.

Thank you for your attention and assistance in this matter.

Mike Twomey

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DOCUMENT NUMBER-DATE

08963 SEP 27 06

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In Re: Fuel and Purchased Power	)	
Cost Recovery Clause with	)	DOCKET NO. 060001-EI
Generating Performance Incentive	)	FILED: September 27, 2006
_____)		

**AARP JOINDER IN CITIZENS' PETITION REQUIRING \$143 MILLION  
REFUND FROM PROGRESS ENERGY FLORIDA, INC. AND FOR PROPOSED  
PROCEDURE AND SCHEDULE  
AND  
AARP JOINDER IN CITIZENS' MEMORANDUM IN OPPOSITION TO PEF'S  
MOTION TO DISMISS CITIZENS' PETITION**

AARP, by and through its undersigned counsel, joins in Public Counsel's Petition for Order Requiring Progress Energy Florida, Inc. to Refund to Customers \$143 Million, Representing Past Excessively High Fuel Costs Stemming from Failure to Utilize the Most Economical Sources of Coal for Crystal River Units 4 and 5 and Proposed Procedure and Schedule, filed in the above-styled docket on August 10, 2006, as well as Citizens' Memorandum in Opposition to PEFs' Motion to Dismiss Citizen's Petition, filed September 13, 2006.

Background

AARP was a party to the general fuel and purchased power ("fuel adjustment clause") proceedings prior to 2006 and remains a party by virtue of AARP's Notice of Reaffirming Party Status, filed January 17, 2006.

AARP is a nonprofit membership organization dedicated to addressing the needs and interests of persons 50 and older. It has staffed offices in all 50 states, the District of Columbia, Puerto Rico and the U.S. Virgin Islands and represents more than 36 million members in total, approximately 2.7 million of whom reside in the state of Florida.

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FPSC-COMMISSION CLERK

AARP's Florida members reside throughout the state and a significant number of them are retail residential customers of Progress Energy Florida, Inc., the second largest electric utility regulated by this Commission.

JOINDER IN PETITION FOR ORDER REQUIRING REFUND AND FOR SCHEDULE

Petition for Order Requiring Refund

AARP joins the Office of Public Counsel ("Public Counsel") in requesting that this Commission order Progress Energy Florida, Inc. ("PEF") to refund \$143 million to its retail customers because, as demonstrated in Public Counsel's petition, PEF made imprudent and unnecessary fuel expenditures that it subsequently charged to its customers through the fuel adjustment clause. As alleged by Public Counsel, PEF's imprudence involved the following facts, among others:

- (1) PEF's Crystal River ("CR") 4 and 5 generating units were designed and built to burn a "design basis," 50/50 blend of sub-bituminous Western and bituminous Eastern coals;
- (2) Despite the 50/50 blend design basis boilers, from the time CR 4 and 5 were placed in service in 1982 and 1984, respectively, until the early to mid-1990s, the high cost of rail transportation, coupled with the then-available Powder River Basin sub-bituminous coal's relatively low Btu content, made that coal an uneconomic choice for PEF and other southeastern utilities. Consequently, these conditions resulted in PEF burning only Eastern bituminous coal in these two units, much of which coal was purchased from, and transported by, PEF affiliates. However, in the early 1990s, higher Btu value sub-bituminous coal was discovered and made available in the Powder River Basin, which, coupled with new rail transportation competition to southeastern utilities,

made the delivered cost of Powder River Basin sub-bituminous coal much lower as compared to Eastern bituminous coal. The relative cost of the sub-bituminous coal was so much lower that a number of southeastern utilities, including Tampa Electric Company and Gulf Power Company, made significant capital expenditures during the 1990s to modify their generating units to burn the lower-cost Powder River Basin sub-bituminous coals;

(3) Despite the fact the delivered cost of Powder River Basin sub-bituminous coal had become lower than the cost for comparable heat value Eastern bituminous coal during the early 1990s and the more critical fact that PEF's CR 4 and 5 units had been specifically designed and built to burn a 50/50 blend of sub-bituminous and bituminous coals, PEF continued to exclusively burn in these two units a more expensive mix of fuels obtained through its affiliated fuel procurement company, Progress Fuels Corporation;

(4) According to Public Counsel's petition, at all times during the 1996-2005 time frame in question, PEF fueled CR 4 and 5 with a mix of bituminous coal and "bituminous coal briquettes," the cost of which significantly exceeded the cost of a 50/50 blend of bituminous and sub-bituminous coals. According to Public Counsel, much of the bituminous coal burned in CR 4 and 5 during this period was purchased from and/or transported by PEF affiliates. Furthermore, the bituminous coal briquettes being utilized at CR 4 and 5 were nothing more than bituminous coal sprayed with an oil mixture, which qualified the briquettes as "synfuel" under a controversial federal tax program. As further noted by Public Counsel, PEF's parent, or other affiliates, earned tax credits of approximately \$24 for each ton of qualifying synfuel they produced and sold to PEF for consumption in CR 4 and 5's boilers;

(5) As also reflected in Public Counsel's petition, and in what should be viewed as a highly questionable and imprudent action, PEF lost its initial Florida Department of Environmental Protection ("FDEP") authorization to burn the design 50/50 blend of bituminous and sub-bituminous coals in CR 4 and 5 through its 1999 permit amendment designed to approve the burning of its affiliate's synfuel coals. The same omission of authority to burn sub-bituminous coals, which was included in the plants' initial permits, was compounded in PEF's 2004 first renewal of its Title V permit authorizing the use of a bituminous and synfuel blend, but not sub-bituminous coal;

(6) Public Counsel's petition alleges that at the same time PEF was purchasing synfuel and other bituminous coal from its affiliates, which was also transported and handled by other affiliates, Powder River Basin sub-bituminous coal "was available at delivered prices lower than the prices that PEF paid for either Appalachian bituminous coal or its affiliates' bituminous coal-derived 'synfuel' material;"

(7) Public Counsel's petition states a 2004 "test burn" of a sub-bituminous and bituminous blend of coals in CR 4 and 5 was halted when PEF realized that it no longer had FDEP authorization for such a fuel blend. According to Public Counsel's petition, a contemporaneous formal RFP for coal for CR 4 and 5 revealed that the delivered price of bids submitted by Powder River Basin suppliers of sub-bituminous coals "were materially lower than the bids received from either the central Appalachian producers or the South American producers to whom Progress Fuels Corporation awarded contracts;"

(8) According to Public Counsel, a subsequent engineering report by Sargent and Lundy commissioned by PEF and presented to it in September 2005, not only confirmed that CR 4 and 5 were designed and built to use a 50/50 blend, but also expressed an

engineering estimate that up to 70 percent of the less expensive sub-bituminous coal could be included in the fuel blend before equipment modifications to CR 4 and 5 would be required;

(9) As noted in Public Counsel's petition, not only was the use of bituminous coals more expensive to customers than the units' design 50/50 blend, its use also resulted in greater air pollution because the Powder River Basin sub-bituminous coal produces only approximately half the sulfur dioxide emissions of the Appalachian bituminous coal being burned by PEF in CR 4 and 5;

(10) Public Counsel's ultimate facts alleged, which AARP joins in their entirety, are that (1) PEF purposefully designed and built CR 4 and 5 to burn a 50/50 blend of bituminous and sub-bituminous coals, and (2) by the early 1990s the availability of higher Btu content Powder River Basin coal, coupled with increased rail transportation competition, rendered Powder River Basin coal economically advantageous, but that PEF failed to take advantage of the lower-cost coal and continued burning higher cost bituminous coal and affiliate synfuel. According to Public Counsel, this decision resulted in unreasonable fuel charges to customers during the period 1996-2005 in the amount of \$143 million, not including interest;

(11) AARP joins in Public Counsel's conclusion that this Commission not only has the requisite legal authority, but indeed, the statutory responsibility, to see that customers are refunded the \$143 million in excessive and imprudent fuel charges, plus interest on that amount.

Proposed Procedure and Schedule

(12) AARP joins in Public Counsel's request that the Commission adopt and implement its Proposed Schedule and Procedure. As noted by Public Counsel, the timing of the disclosures related to PEF's fuel purchase practices, coupled with an already full agenda for the November 2006 fuel adjustment hearings, will not allow time for Public Counsel's petition to be adequately considered, which consideration will necessarily include (1) the filing of Public Counsel's and other customer party testimony, (2) PEF's responsive testimony, and (3) a meaningful opportunity for Public Counsel and other customer parties to evaluate and rebut PEF's responsive testimony.

JOINDER IN CITIZENS' MEMORANDUM IN OPPOSITION TO PEF'S MOTION TO DISMISS CITIZENS' PETITION

AARP adopts and joins in Citizens' Memorandum in Opposition to PEF's Motion to Dismiss Citizens' Petition for all the reasons stated in Citizens' comprehensive memorandum<sup>1</sup>, including:

(13) Public Counsel's petition involves allegations of imprudent conduct that the Commission must assume to be admitted for purposes of ruling on the Motion to Dismiss;

(14) The Commission clearly has the authority to order the requested refunds because the fuel adjustment proceedings are legally continuous, as recognized by the Florida Supreme Court, until the prudence of specific costs can be examined. There is no "hindsight" involved in the allegations of Public Counsel's petition;

(15) The Florida Supreme Court-sanctioned, continuous nature of fuel cost prudence reviews by this Commission is essential because the utilities are almost exclusively the

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<sup>1</sup> Anyone now involved in electric utility regulation, but who lacks 30 years' continuous experience, is likely to benefit from the history of the fuel adjustment proceedings contained in Citizens' memorandum.

custodians of the information necessary to gauge the correctness and prudence of their fuel-related actions. This is particularly true in cases such as this where Public Counsel alleges “PEF consciously abandoned its right to burn sub-bituminous coal at Crystal River Units 4 and 5 in 1996, then later claimed the reason it did not buy the cheapest fuel was because PEF is not permitted to burn it.” As emphasized by Public Counsel, the continuous review authority is especially compelling and necessary in cases, such as this, where the utility has “withheld critical information bearing on the Commission’s ability to review prudence.”

## CONCLUSION

There is no legal justification for granting PEF’s Motion to Dismiss when considering the motion in light of the standard for granting such a motion. This is especially true when considering this Commission’s extensive precedents establishing the continuing nature of the fuel adjustment clause proceedings and, more importantly, in light of the Florida Supreme Court’s decisions consistently affirming this precedent. Rather, Public Counsel’s Petition, supported by its attached PEF documents, makes a highly compelling case that PEF consciously ignored – and even bargained away -- the design capabilities of CR 4 and 5 to burn lower cost sub-bituminous coal. Instead of burning the lower-cost coal, PEF burned higher cost bituminous coal and synfuel provided by its affiliates for at least a ten-year period and at an excessive cost to its customers of some \$143 million, not including interest.

WHEREFORE, AARP joins in Public Counsel’s’ Petition for Order Requiring Progress Energy Florida, Inc. to Refund to Customers \$143 Million, Representing Past Excessively High Fuel Costs Stemming from Failure to Utilize the Most Economical

Sources of Coal for Crystal River Units 4 and 5 and Proposed Procedure and Schedule,  
filed in the above-styled docket on August 10, 2006, as well Citizens' Memorandum in  
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Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true copy of the foregoing has been furnished by electronic mail and U. S. Mail, this 27<sup>th</sup> day of September, 2006 on the following:

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