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Sent: Friday, February 02, 2007 3:33 PM
To: Filings@psc.state.fl.us
Subject: 070052-EI Filing
Attachments: motion to abate--final.doc

ORIGINAL

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1. **Docket Number: 070052-EI;** Petition by Progress Energy Florida, Inc. to recover costs of Crystal River Unit 3 uprate through fuel clause

2. Attached for filing on behalf of Office of Public Counsel (Citizens), AARP, the Florida Industrial Power users Group (FIPUG), and the Florida retail Federation, Motion to Abate PEF's Request for Authority to Collect Capital and O&M Costs of its Proposed Capacity Upgrade to its Nuclear Generating Facility Through the Fuel Cost Recovery Clause

3. There are a total of thirteen (13) pages for filing.

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BEFORE THE PUBLIC SERVICE COMMISSION

In re: Petition by Progress Energy Florida, Inc. to recover costs of Crystal River Unit 3 uprate through fuel clause	Docket No.: 070052-EI Filed: February 2, 2007

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JOINT MOTION TO ABATE PEF'S REQUEST FOR AUTHORITY TO COLLECT CAPITAL AND O&M COSTS OF ITS PROPOSED CAPACITY UPGRADE TO ITS NUCLEAR GENERATING FACILITY THROUGH THE FUEL COST RECOVERY CLAUSE

The Citizens of the State of Florida (Citizens), AARP, the Florida Industrial Power Users Group (FIPUG), and the Florida Retail Federation, here after Joint Movants hereby file their Joint Motion to Abate the consideration of Progress Energy Florida Inc. ("PEF")'s request for authority to recover the costs of its proposal to increase the generating capacity of its Crystal River 3 nuclear unit through its fuel cost recovery clause in the event the Power Plant Siting Board authorizes PEF to proceed with its proposal, and as grounds state the following:

I. BACKGROUND

1. On September 22, 2006, PEF filed its Petition for Determination of Need for Expansion of an Electrical Power Plant, for Exemption from Rule 25-22.082, F.A.C., and for Cost Recovery though the Fuel Cost Recovery Clause. Progress' Petition requested the Commission to take three separate actions. First, Progress asked the Commission to determine that a need exists for the additional capacity proposed by PEF within the meaning of the Florida Electrical Power Plant Siting Act. Progress has proposed to increase the generating capacity of its Crystal River 3 nuclear power plant from 900 MW to 1,080 MW, an increment of approximately 180 MW. Progress' planned increases to

its plant are to be done in two phases. The first phase, if approved, will occur during the 2009 refueling outage. This phase includes the steam generator replacement for the Crystal River 3 license extension. The second phase is to occur during the 2011 refueling outage. Progress contends that it is making its request for a determination of need now, because of the need to order the equipment to complete the work scheduled for 2009 and 2011. Second, Progress requested a waiver of Rule 25-22.082, Florida Administrative Code (the "BID rule").

2. In addition to the need determination and BID rule requests, Progress also requested the Commission to rule that it may recover the costs associated with the nuclear power plant modifications through the Fuel and Purchased Power Cost Recovery Clause.

3. By Order No. PSC-06-1059-PCO-EI, issued December 22, 2006, in Docket No. 060642-EI, the cost recovery issue was severed from the need determination and the BID rule request.[1] On January 18, 2007, the need determination hearing was held in Docket No. 060042-EI, where stipulations on the issues related to the need determination and BID rule were reached and accepted by the Commission.

4. On January 16, 2007, the Commission established the above docket to address PEF's cost recovery request.

II. PEF'S COST RECOVERY REQUEST IS PREMATURE

5. The Siting Act imposes on the Commission extremely expedited time frames within which it must rule on a petition for a determination of need. Section 403.519(4), Florida Statutes, states that "In making its determination on a proposed electrical power

[1] The Motion to Sever and Abate the proceeding was filed on November 26, 2006. The Commission addressed the Severance request only. Thus, Joint Movants are filing their Motion To Abate with modifications in the above docket.

plant using nuclear materials as fuel, the commission shall hold a hearing within 90 days after the filing of the petition to determine the need and shall issue an order granting or denying the petition within 135 days after the date of the filing of the petition." In light of the statutory requirements, Joint Movants had no objection to the expedited treatment of the portion of the Petition related to the determination of the need for the proposed increase in generating capacity. However, while the Commission is required to hold a hearing within 90 days on the need determination portion of the petition, no such requirement attaches to the issue of the manner of future cost recovery. PEF's request for authority to recover the costs of nuclear generating capacity includes in this instance costs of physically modifying the facility to generate additional steam, transmission system changes, and costs of dealing with the impact of additional heat on environmental discharge limits. PEF's cost recovery request raises extremely significant issues of proper and improper ratemaking techniques that demand full, deliberate, and informed consideration in a proceeding that is not stressed by what would be unnecessary and artificial time pressure. It would be unnecessary, inappropriate, inefficient, and prejudicial to customers' interests to entertain now PEF's request for a ruling on the manner of future cost recovery for any plant improvements.

6. Further, pursuant to the Electrical Power Plant Siting Act, if the Commission makes a positive need determination, PEF's proposal moves to lengthy proceedings administered by the Department of Environmental Protection and presided over by an administrative law judge, who then will submit a recommendation to the Florida Cabinet, sitting as the Florida Electrical Power Plant Siting Board. While the Commission has recently made its determination regarding the need determination, that ruling does not

enable PEF to proceed with the project. Indeed, the determination of need is only a condition precedent to the additional processing and consideration of PEF's proposal by other agencies, the administrative law judge, and ultimately the Governor and Cabinet, sitting as the Florida Electrical Power Plant Siting Board ("the Board"). Unless and until the Board approves PEF's application for certification of the project, there can be no expenditures for increasing the capacity of CR3, which means that currently there simply is no approved project for which to consider means of cost recovery. It would be both inefficient and inappropriate to rush to consider the method of cost recovery when it is not yet known that there will actually be a project. In other words, PEF's request for recovery of any costs is premature.

III. PEF'S COST RECOVERY PROPOSAL IS INCONSISTENT WITH STATUTE

7. PEF's proposal to recover associated costs through the fuel cost recovery clause is plainly inconsistent with the statute under which PEF is proceeding with its petition. The anomalous nature of PEF's request can be seen by a review of the very statute under which PEF is proceeding with its petition. Section 403.519(4)(3), Florida Statutes, contemplates that recovery issues will only be addressed after the petition for need determination has been approved. Section 403.519(e), states:

> **After** a petition for determination of need for a nuclear power plant has been granted, the right of a utility to recover any costs incurred prior to commercial operation, including, but not limited to, costs associated with the siting, design, licensing, or construction of the plant, shall not be subject to challenge unless and only to the extent the commission finds, based on a preponderance of the evidence adduced at a hearing before the commission under s. 120.57, that certain costs were imprudently incurred.

(emphasis added). As noted in the statute, once the Commission determines need for a nuclear power plant, the utility may expend funds to make its improvements with assurance that those costs are eligible for recovery unless it is determined at a subsequent hearing that those costs were imprudent.[2] Even if PEF argues that it is not seeking recovery specifically under the nuclear power plant section of the statute, the nuclear section provides guidance as to the appropriate recovery treatment for any power plant improvements and should be applied in the instant case.

IV. PEF'S PROPOSAL RAISES SIGNIFICANT POLICY ISSUES THAT REQUIRE DELIBERATE, REASONED ANALYSIS

8. PEF's proposal to lead the Commission even farther from the original purpose of the Fuel Cost Recovery Clause raises significant policy issues. For some time, Joint Movants have been concerned that the original purpose of the Fuel Cost Recovery Clause ("Fuel Clause" or "clause") has been obscured, and the clause has been abused by ever-increasing encroachments on the distinction between the proper role of base rates and what should be a limited departure from base rates in the form of a cost recovery clause. To ensure that investments and expenses borne by rates paid by customers are prudent and reasonable, a utility's total revenue needs are addressed in proceedings – commonly known as general rate cases - that review the posture of the utility on an overall basis, so that the full dynamics and potentially offsetting effects of revenues stemming from

[2] Moreover, the statute makes clear that the costs associated with nuclear power plant improvements requiring a need determination proceeding are base rate items. Section 403.519(4)(a)(4), Florida Statute, requires the utilities to include in their need determination petitions "The annualized base revenue requirement for the first 12 months of operation of the nuclear power plant." (Emphasis added.) The statute explicitly contemplates recovery of costs associated with nuclear generating plant through base rates.

customer growth, growth in individual customers'demand for services, cost savings resulting from efficiencies, the retirement of plant, etc. can be taken into account when reviewing a claim of an individual increased expense or new investment. In such a setting the Commission also considers the business risk to which the utility is exposed and establishes a return that is commensurate with that risk. The return on investment is included in the revenue requirement that is collected through the "base rates."

9. The Fuel Clause was intended to provide a limited exception to general ratemaking to address a particularly volatile component of the utility's costs of providing service. Well after the Fuel Clause was put into place, the Commission began allowing utilities to recover the costs of certain programs and projects through the cost recovery clause upon the showing of a nexus between the particular expense and fuel savings. [3]

10. Joint Movants have watched as the utilities have expanded upon and exploited this rationale over time. If Florida's system of utility regulation has reached the point at which a utility can assert, with a straight face, that a future investment in additional nuclear generating capacity should be recovered through the Fuel Clause, it is time to revisit the wisdom of the departure from the original purpose of the fuel cost recovery clause.[4] It is time for the Commission to recognize that the utilities have a huge incentive to roll as many costs as possible through a cost recovery clause instead of

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[3] In a need determination, the Commission is required to consider the costs savings of a project (such as fuel savings) in its decision making. See Section 403.519(3), Florida Statutes. The consideration relates to the merits of the petition to determine need, not the issue of recovery through base rates or a cost recovery clause.

[4] Order No. 14546 which defines the costs which should flow through the Fuel Clause states that only "Prudently incurred fossil fuel-related expenses which are subject to volatile changes should be recovered through an electric utility's fuel adjustment clause. . . . All other fossil fuel-related costs should be recovered through base rates." Id. at p. 2. (Emphasis added.)

recovering them through base rates—and that incentive is adverse to customers' interests. When a utility pours costs traditionally related to base rates through a cost recovery clause, it avoids proper Commission analysis of the ability of the utility to absorb the costs in revenues generated by base rates without increasing either base rates or the fuel cost recovery factor. In those instances in which the utility could absorb all or some of the costs through existing base rate revenues and continue to earn a fair return on its overall investment in plant, the impact of permitting recovery through an increase in a cost recovery factor would be to require customers to pay more than they should for the service they receive. In such a setting, the permission to collect the base rate-related expense through the fuel cost recovery clause would cause customers' overall bills to increase—a "back door" rate increase—when revenues and income derived from base rates may well be adequate to absorb the expense without increasing customers' bills.[5] Further, each time a utility rolls capital investments through a cost recovery clause and through the "true–up" provision of a cost recovery clause, the utility avoids the business risk upon which the design of base rates (and hence the approved revenue requirement) was premised, but adds the full return on investment of the subject capital to the expenses it pours through the clause (i.e. all gain, no risk).

11. The impact of collecting the capital costs associated with the CR3 project through the cost recovery clause would be particularly egregious in this instance, because - unlike the scenarios envisioned by the Commission in past decisions to allow cost recovery through the Fuel Clause - PEF would have the ability, pursuant to normal,

[5] This is not merely a theoretical possibility. Because of the impact on revenues of growth on its system, in the 1990s Florida Power & Light Company was able to absorb a series of power plants without increasing base rates, and without including any of the related capital and non-fuel O&M costs in the fuel cost recovery factor.

accepted regulatory accounting and ratemaking standards, practices, and procedures, to capitalize its early costs and the opportunity to file a base rate request coordinated with the in-service date of the CR3 improvements. Far from rushing to a decision on PEF's request based on an artificial time constraint, Joint Movants submit that the Commission should reassess the wisdom of ever-increasing expansions of demands for "clause treatment" in a setting in which the appropriate roles of base rates and the fuel cost recovery clause can be assessed thoroughly and dispassionately. As will be stated more fully below, Joint Movants intend to initiate such a proceeding by separate petition within the next 30 days.[6] Joint Movants submit the request of PEF in the instant docket should be abated pending the outcome of a broader policy review.

12. PEF's clause-based recovery request also raises issues that are specific to its ratemaking history and its current posture with respect to its Crystal River 3 nuclear power plant. The Commission permitted PEF to recover through base rates its investment in Crystal River 3 in Order No. 8160, issued February 2, 1978, in Docket No. 770136-EU,. At that time, the Commission established depreciation rates designed to enable PEF to recoup the costs of its investment in Crystal River 3 over the anticipated life of the unit. If and when PEF's proposed modifications enter service, Crystal River 3 will have been in commercial service for approximately 30 years. Moreover, recent base rate proceedings have been the subjects of settlements rather than detailed reviews of individual accounts. If PEF is allowed to recover the costs of its proposed project to increase the generating capacity of Crystal River 3 through the fuel cost recovery clause, it will avoid an analysis of the existing undepreciated balance of the investment in Crystal

[6] The Commission's fuel proceeding have an exemption from required rulemaking pursuant to Section 120.80(13)(a), Florida Statutes.

River 3, an analysis of the depreciation expense currently associated with the unit, as well as a consideration of the impact of the extended life of the unit on current ratemaking.

13. PEF's request for authority to collect the costs of additional nuclear generating capacity through the fuel cost recovery clause is the most recent, and boldest, example of efforts by utilities to expand the fuel cost recovery clause far beyond its original purpose. The proposal raises significant policy questions: In terms of regulatory wisdom and effects on customers, is it appropriate to broaden the categories of costs to be rolled through the fuel cost recovery clause in order to entice utilities to spend money that the utilities' obligations to provide cost-effective customer service dictate should be spent anyway? Should the Commission impose on customers the "back door" rate increases that result when utilities roll base rate-related costs through the fuel cost recovery clause, even though earnings achieved through base rate revenues are adequate to absorb them without increasing the customers' overall bills? Should capital investments ever be collected through the fuel cost recovery clause? If so, should the Commission recognize that the true-up aspect of the clause reduces the utiltiy's business risk and lower the return allowed on capital items that travel the clause? Citizens are preparing, and intend to file in the immediate future, a petition to request the Commission undertake to review such policy questions generally.

V. SUMMARY AND PRAYER FOR RELIEF

14. By including its anomalous, controversial, and fundamentally inappropriate request to recover the costs of nuclear generating plant through the Fuel Clause, PEF attempted to piggyback onto the expedited time frames of the Siting Act an issue that is separate from and unrelated to the subject of a determination of need, and rush the

Commission into a hurried decision on a matter of extreme importance to customers. Now, PEF is again trying to artificially create sense of urgency that this matter must be heard on an expedited basis (i.e. request for hearing before May of this year). PEF claims that since it will begin expending funds this year, it needs a determination of fuel recovery this year. The Commission should resist this contrived sense of urgency and PEF's artificially created conundrum. First, the means of recovery should be taken up only after approval of the project under the Florida Siting Act, not before the final approval is granted or denied by the Florida Cabinet. PEF's request for approval of recovery through any methodology is premature.

Second, under the statute plant improvements such as this are clearly base rate items and are not eligible for recovery until placed into service. PEF is not at any disadvantage because the statute authorizes recovery of all prudently incurred costs. For nuclear power plants, certain costs are recoverable on a more current basis.

Finally, the fuel cost recovery clause, which originally was intended to address volatile fossil fuel costs, has been subjected to the incremental expansion of costs inclusion well beyond its original purpose. A case by case approach to individual utility requests has facilitated the expansion. Citizens believe that a global review rather than a piecemeal examination of such costs will lead to a more cogent and cohesive policy to be applied to this and other future issues in the fuel docket. Citizens will soon seek in a separate docket a broad policy review of the appropriateness of including certain costs in the amounts approved for collection through the fuel clause. As noted above, PEF's prudent expenditures are protected.

15. Therefore, the Commission should abate the proceeding. At a minimum, the cost issues should be held in abeyance until the Florida Cabinet renders its determination. However, even should the Cabinet grant PEF's request, Citizens believes that any decision regarding recovery on such costs through the fuel clause should be put on hold until resolution of a broader policy review.

WHEREFORE, the Joint Movants hereby request the Commission to abate its consideration of PEF's request for authority to collect costs associated with its proposed "CR3 uprate" through the fuel cost recovery clause.

Respectfully Submitted,

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DOCKET NO. 070052-EI
CERTIFICATE OF SERVICE

I, HEREBY CERTIFY that a true and correct copy of the Joint Movants Motion to Abate PEF's Request For Authority to Collect Capital and O&M Costs of its Proposed Capacity Upgrade to its Nuclear Generating Facility Through the Fuel Cost Recovery Clause has been furnished by electronic mail and U.S. Mail on this 2nd day of February, 2007, to the following:

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