

**Matilda Sanders**

ORIGINAL

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 Subject: Filing Docket 060658

Attachments: PEF Motion for Extension of Time to File Responsive Testimony.pdf



PEF Motion for Extension of Ti...

<<PEF Motion for Extension of Time to File Responsive Testimony.pdf>> Attached for filing on behalf of Progress Energy Florida, Inc. is Progress Energy Florida, Inc.'s Motion for Extension of Time to File Testimony in Response to Commission Staff Testimony. Paper service copies will be sent today.

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DOCUMENT NUMBER-DATE  
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 FPSC-COMMISSION CLERK

**BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION**

In Re: Petition on behalf of Citizens of	)	
the State of Florida to require	)	DOCKET NO. 060658-EI
Progress Energy Florida, Inc. to	)	
refund to customers \$143 million	)	Filed: February 16, 2007

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**PROGRESS ENERGY FLORIDA, INC.'S MOTION FOR EXTENSION  
OF TIME TO FILE TESTIMONY IN RESPONSE  
TO COMMISSION STAFF TESTIMONY**

Progress Energy Florida, Inc. ("PEF" or the "Company") moves the Florida Public Service Commission ("FPSC" or the "Commission") for an extension of time to March 6, 2007 to file testimony in response to the Commission Staff testimony filed February 14, 2007 (with the exhibits filed February 15, 2007). This date is consistent with the extension granted the Office of Public Counsel ("OPC") to file rebuttal testimony to PEF's testimony (which PEF did not oppose). The extension is necessary to provide PEF a fair opportunity to evaluate the Staff testimony and 293 pages of exhibits, to conduct discovery, and to respond to the testimony, if a response is required at all.

This docket was opened to address the issue raised in OPC's petition to require PEF to refund customers \$143 million. That issue, based on OPC's allegations in its petition and the testimony OPC filed in October 2006, was whether PEF should have purchased and burned an equal blend of bituminous coal and sub-bituminous coal from the Powder River Basin (PRB) at its Crystal River units 4 and 5 from 1996 to 2005 rather than the bituminous and bituminous based coal products PEF purchased and burned during that time period. The parties agreed to the schedule in the order establishing procedure in this docket based on the understanding that this was the issue in this proceeding.

The parties, therefore, agreed that (i) OPC and AARP should file testimony in October and early November, respectively, in support of the issue asserted in OPC's petition, (ii) with PEF filing testimony in response to the petition and that testimony by January 16, 2007, (iii) Staff filing testimony in response to OPC, AARP, and PEF by the end of January, and (iv) OPC and AARP filing rebuttal testimony to what PEF filed by February 20, 2007. When PEF filed its testimony addressing the issue raised by OPC's petition, both Staff and OPC requested additional time to respond. Staff requested an extension to February 13, 2007 and OPC requested an extension to March 6, 2007. PEF did not object to those requests. The First Order Revising Order Establishing Procedure granting the extensions requested by OPC and Staff was issued February 15, 2007.

Staff filed the testimony of Bernard M. Windham on behalf of the Commission Staff on February 14, 2007 and filed exhibits to that testimony totaling 293 pages on February 15, 2007. Mr. Windham's testimony raises an issue that was not raised by OPC's petition and OPC's (and AARP's) testimony, which of course, is what PEF responded to with its own testimony and exhibits. Mr. Windham's testimony attempts to insert an entirely new issue in this proceeding.

Mr. Windham, apparently after having reviewed the petition and testimony filed by OPC, and the testimony and exhibits filed by PEF, purports to provide "basic information" on the median delivered price of *foreign* low sulfur compliance coal to southeastern coastal utilities from 1996 to 2005 compared to the delivered price of the bituminous coal products used by PEF. See Testimony of Mr. Windham, p. 2, lines 2-6, p. 4, lines 10-20. Indeed, Mr. Windham purports that PEF could have purchased approximately 1 million tons per year of *foreign* low sulfur compliance coal for Crystal River units 4 and 5 on the assumption that no Powder River Basin coal should have been burned at CR4 and CR5. See Testimony of Mr. Windham, p. 11,

lines 14-19. In sum, Mr. Windham appears to assert that PEF should have purchased more foreign compliance coal -- not PRB coal -- than PEF did for CR4 and CR5 over the past ten to twelve years.

Staff has filed testimony that is beyond the scope of this proceeding. It raises an issue that is not raised by OPC's petition and testimony. PEF, accordingly, expects to soon file a motion to strike Staff's testimony because it is outside the scope of the petition in this docket (among other reasons to be addressed in the motion).

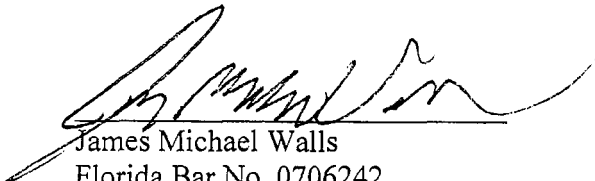
Pending a ruling on its expected motion to strike Staff's testimony, however, PEF must request an extension of time to respond with testimony of its own to Staff's testimony. Because PEF had no notice that the issue raised by Staff's testimony was going to be an issue in this proceeding when PEF agreed to the current schedule incorporated in the order of procedure, PEF cannot be held to the current schedule for testimony. Yet, Staff counsel has represented to PEF counsel that PEF may file rebuttal testimony to Staff's testimony on February 20, 2007, the original rebuttal date for OPC and current rebuttal date for AARP to respond to PEF's testimony. This schedule simply provides PEF an inadequate opportunity to respond to Staff's testimony, in the event PEF must do so.

PEF would have only five (5) calendar days (three (3) business days) to file testimony in response to Staff's testimony from the date PEF received the exhibits to Staff's testimony. This is simply insufficient time to provide PEF with a fair and adequate opportunity to evaluate Staff's testimony and exhibits, take discovery, and file rebuttal testimony to Staff's testimony. PEF, accordingly, requests an extension of time at least to March 6, 2007, when OPC will file rebuttal testimony, to file testimony in response to Staff's testimony.

PEF has consulted Staff counsel, AARP counsel, and OPC counsel, and communicated its request for an extension to respond to Staff testimony to all parties of record in the 2006 Fuel Docket. Staff, AARP, and OPC do not oppose PEF's request for an extension to March 6, 2007 to file testimony in response to the testimony filed by Staff.

WHEREFORE, for all of the foregoing reasons, PEF requests the Commission grant its motion for an extension of time to March 6, 2007 to file testimony in response to Staff's testimony.

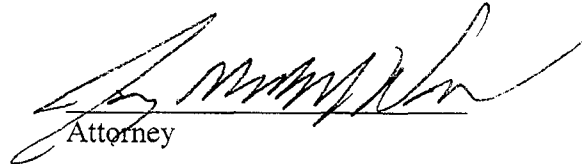
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**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished via electronic and U.S. Mail this 16<sup>th</sup> day of February, 2007 to all parties of record as indicated below.

  
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