

# ORIGINAL

## BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In Re: Petition on behalf of Citizens of )  
the State of Florida to require )  
Progress Energy Florida, Inc. to )  
refund customers \$143 million )  
\_\_\_\_\_ )

DOCKET NO. 060658-EI

March 6, 2007

### REBUTTAL TESTIMONY OF TODD F. BOHRMANN

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4                                   **ON BEHALF OF CITIZENS OF THE STATE OF FLORIDA**

5

6   **Q.    Would you please state your name and business address?**

7   A.    My name is Todd F. Bohrmann. My business address is 5073 Monroe Forest  
8        Drive, Jacksonville, Florida 32257.

9   **Q.    By whom are you employed and in what capacity?**

10 A.    I am a self-employed regulatory consultant.

11 **Q.    Please give a brief description of your educational background and relevant**  
12 **professional experience.**

13 A.    I graduated from the University of Central Florida in 1989 with a Bachelor of Arts  
14        degree in Economics. I earned a Master of Business Administration degree from  
15        the University of Central Florida in 1992.

16

17        I was employed by the Florida Department of Environmental Protection as an  
18        economist from November 1992 to May 1994. I was employed initially as a  
19        regulatory analyst, then as an economic analyst with the Florida Public Service  
20        Commission (FPSC or Commission) from May 1994 to March 2006. Since  
21        leaving the Commission, I have consulted for several intervening parties  
22        regarding the appropriate costs to be recovered through a cost recovery clause.

23 **Q.    What were your responsibilities with the Commission?**

1 A. I provided technical support and advice to the Commission for docketed and  
2 undocketed matters concerning electric utilities in Florida. Among my  
3 responsibilities, I was the lead technical analyst for the Commission's fuel and  
4 purchased power cost recovery clause and generation performance incentive  
5 factor docket (fuel clause).

6 **Q. Have you previously testified before the Commission?**

7 A. Yes. In Docket No. 930885-EU, I presented a framework for establishing  
8 territorial boundaries in a dispute between Gulf Power Company and Gulf Coast  
9 Electric Cooperative. In Docket No. 011605-EI, I filed testimony that  
10 recommended the appropriate level of regulatory oversight of each investor-  
11 owned electric utility's risk management activities and the appropriate type and  
12 level of recoverable costs thereof.

13 **Q. What is the purpose of your testimony?**

14 A. On behalf of the Office of Public Counsel (OPC or Public Counsel), the purpose  
15 of my testimony is to rebut portions of Steven M. Fetter's pre-filed direct  
16 testimony.

17 **Q. On page 22 of Mr. Fetter's pre-filed direct testimony, he states: "...the  
18 Commission has indeed conducted a prudence review by the time the fuel  
19 costs are ultimately trued-up." Is this statement consistent with PSC  
20 practice?**

21 A. No. Mr. Fetter either misunderstands or ignores the structure and the purpose of  
22 the fuel cost recovery mechanism that the Commission consciously and purposely  
23 established in the early 1980's. As the Commission contemplated the fuel cost

1 recovery mechanism, it recognized that the use of projections instead of historical  
2 costs enables utilities to collect costs from customers in the same time frame in  
3 which the utilities spend the money for fuel, and that this is a significant benefit  
4 for utilities. Very importantly, however, the Commission also recognized that the  
5 use of projections means the Commission does not have full information when it  
6 authorizes collections to begin. Accordingly, the Commission structured a  
7 program in which early collections could occur, but in which the Commission  
8 would retain the ability to review prudence and reasonableness until all facts had  
9 been presented and fully adjudicated. The Commission initially established the  
10 principles of the contemporary fuel clause in Order No. 12645, in Docket No.  
11 830001, issued November 3, 1983 (Order No. 12645). In an early challenge to its  
12 authority to implement the fuel clause, the Commission explicitly articulated the  
13 regulatory “quid pro quo” by Order No. 13452, in Docket No. 820001-EU-A,  
14 issued June 22, 1984, wherein it stated:

15 Under the current clause, the 60 day lag has ceased. A  
16 utility may now recover its entire fuel cost concurrent with  
17 the expense. If the utility under-recovers fuel expenses  
18 because its projections were low it recovers the deficiency  
19 with interest during the next period. Although the effect of  
20 regulatory lag on a utility’s rates is now eliminated,  
21 regulatory lag still exists. It still takes time for the  
22 Commission to collect and analyze information relevant to  
23 the accuracy and prudence of fuel expenditures. Under the  
24 old clause a utility was subject to a delay in recovery.  
25 Under the new clause recovery is immediate. There is a  
26 trade-off under the new clause, however, as a utility  
27 remains uncertain as to whether the Commission will  
28 ultimately determine its expenditures to be prudent.

29 The Commission made it explicitly and absolutely clear that its ability to consider  
30 the question of prudence did not end with the true-up aspect of the proceeding.

1 **Q. In your experience as lead technical analyst for the fuel docket, did the**  
2 **Commission follow the process described by Order No. 12645?**

3 A. Yes. During my tenure, the mechanism worked in practice just as the  
4 Commission laid it out in its orders. Although the fuel clause has evolved since  
5 Order No. 12645, the “quid pro quo” that protects the interests of the customers  
6 has not changed. Each utility is required to file its direct testimony and exhibits to  
7 justify its requested change to its fuel factor no later than 60 days prior to the fuel  
8 hearing. Given that the utilities collect more than \$10 billion annually through the  
9 fuel clause, staff did not have the resources to conduct a prudence review on the  
10 entirety of the \$10 billion prior to the hearing. Staff would conduct a less  
11 rigorous analysis to determine whether the projected costs fell within a reasonable  
12 range of expectations for the upcoming calendar year. Following a hearing on  
13 projections and/or a true-up period, when I recommended that the Commission  
14 allow a utility to begin collecting costs, I fully understood that I was not  
15 recommending, and that the Commission would not have adjudicated, that these  
16 costs were prudently incurred.

17 **Q. On page 8 of his pre-filed direct testimony, Mr. Fetter states: “There is no**  
18 **need for the Commission to change the existing regulatory process used to**  
19 **authorize the recovery of fuel costs from utility customers.” How would you**  
20 **respond?**

21 A. It is actually Mr. Fetter who is advocating that the Commission change its process  
22 in this case. On page 10, lines 6-9 of his pre-filed direct testimony, he advocates  
23 that the Commission should give up its jurisdiction over such costs upon “true-

1 up.” This recommendation directly contradicts the longstanding Commission  
2 position on this point. The Commission specifically addresses this matter by  
3 Order No. 12645. In pertinent part, Order No. 12645 at page 9 states: “We see  
4 no justification in limiting our ability to scrutinize past transactions....We will be  
5 free to revisit any transaction until we explicitly determine the matter to fully and  
6 finally adjudicated.” Mr. Fetter is advocating a change from the policy set forth  
7 by Order No. 12645; whereas, Public Counsel has been proceeding with the  
8 mechanism as it has long been stated by and practiced by the Commission.

9 **Q. Does the Commission audit the fuel costs that each utility recovers from its**  
10 **ratepayers on an annual basis?**

11 A. Yes. The Commission performs an annual audit to make certain that each utility  
12 complies with the relevant Commission orders and applicable accounting  
13 standards that govern how each utility can recover its fuel costs from its  
14 ratepayers. In my experience, I typically sent an Audit Service Request (ASR) to  
15 the audit staff by March 1 of each year for the prior calendar year. The audit staff  
16 usually sent me its audit report and workpapers by August 1. This schedule  
17 provided me with sufficient time to follow up on any audit disclosures or  
18 exceptions prior to the next fuel hearing in November. If warranted, I identified  
19 these audit disclosures and exceptions as issues for that hearing.

20 **Q. Once you had received the audit report for the prior year, would you**  
21 **consider those costs not subject to an audit disclosure or exception to be**  
22 **prudently incurred?**

1 A. No. I would not classify those costs as prudently incurred for two reasons. First,  
2 I did not request the audit staff to determine whether a specific cost was prudent.  
3 Upon my request, the audit staff determined whether the utility had complied with  
4 a specific standard set forth in the ASR. It is the analyst's responsibility, not the  
5 auditor's, to gauge the reasons for a utility's actions, and recommend whether the  
6 utility acted prudently. Second, the Commission would still maintain jurisdiction  
7 over those costs. Until the Commission adjudicates whether a specific cost is  
8 prudent, those costs are not classified as prudent or imprudent.

9 **Q. In your experience as lead technical analyst for the fuel clause, did a time**  
10 **limit exist for when a party or staff could raise an issue regarding whether a**  
11 **utility had prudently incurred specific costs?**

12 A. No. I understood that as long as the Commission had not ruled on the prudence of  
13 such costs and parties or Staff brought relevant facts to the Commission that the  
14 utility had not presented, the Commission was not foreclosed from considering  
15 prudence. Therefore, I did not consider the Commission's silence or the passage  
16 of time sufficient to classify a specific cost as prudent.

17 **Q. If the Commission disallows a portion of PEF's fuel costs, per Public**  
18 **Counsel's petition, would that action be consistent with your understanding**  
19 **of the proper workings of the fuel cost proceeding?**

20 A. Yes. To the extent that OPC has presented relevant facts bearing on prudence that  
21 had not been provided earlier by the utility, it follows that, until this point, the  
22 issue of prudence was not ready for final determination.



1 **Q. On page 29 of his pre-filed direct testimony, Mr. Fetter predicts that the**  
2 **rating agencies would be stunned if the Commission validated OPC's theory**  
3 **on coal procurement and costs. He further stated: "The major concern of**  
4 **the financial community about the utility industry is the rapid run-up in fuel**  
5 **and purchased power costs and whether companies will receive timely and**  
6 **complete recovery for prudent actions..." How do you respond to this**  
7 **statement?**

8 **A.** The Commission should consider OPC's request, and Mr. Fetter's comment, in  
9 context. The total excess fuel charges identified by OPC represent a small portion  
10 of PEF's annual jurisdictional fuel costs. I compared the proposed refund, shown  
11 in annual increments in Ms. Merchant's exhibit, to the amounts that PEF collected  
12 from customers through the fuel cost recovery clause annually during the period  
13 2000 through 2005, the period of time for which information from PEF's "A"  
14 schedules regarding amounts collected was readily available. Measured on an  
15 annual basis, the proposed refund represented an average of 1.6% of jurisdictional  
16 fuel costs that PEF recovered during that period. I would note that, as the amount  
17 of the requested refund rose significantly in the latter years of the 1996-2005  
18 period that is the subject of the Petition, a similar calculation applied to the entire  
19 period most likely would yield a result lower than 1.6%.

20 **Q. Does this conclude your testimony?**

21 **A.** Yes.

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of foregoing Rebuttal Testimony of Todd F. Bohrmann has been furnished by U.S. Mail on this 6<sup>th</sup> day of March, 2007, to the following:

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