

Dorothy Menasco

From: Hannon, Coralette [CHannon@aarp.org]
Sent: Monday, April 30, 2007 4:31 PM
To: Mike Twomey; Filings@psc.state.fl.us
Cc: Parham, Lori; Spencer, Leslie
Subject: Electronic filing in Docket no. 060658-EI

ORIGINAL

Attachments: AARP's Docket No. 060658 Post Hearing Statement_Final.doc; AARP's Docket No. 060658 Post hearing brief_Final.doc



AARP's Docket AARP's Docket
o. 060658 Post o. 060658 Post

a. Person responsible for this electronic filing:

Michael B. Twomey
PO Box 5256
Tallahassee, Fl 32314-5256
850-421-9530

b. Docket No. 060658-EI

In re: Petition on behalf of Citizens of the State of Florida to required Progress Energy Florida, Inc. to refund customers \$143 million

c. Documents being filed on behalf of AARP

d. There are a total of two documents.

e. The first document attached for electronic filing is AARP's Posthearing Statements, consisting of 5 pages
The second document attached for electronic filing is AARP's Posthearing Brief on Penalty Issue, consisting of 8 pages.

Mike Twomey

- CMP _____
- COM 5
- CTR _____
- ECR _____
- GCL _____
- OPC _____
- RCA _____
- SCR _____
- SGA _____
- SEC _____
- OTH _____

DOCUMENT NUMBER-DATE
03664 APR 30 5
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 customers \$143 million)	Filed: April 30, 2007
_____)	

AARP'S POSTHEARING STATEMENT OF ISSUES & POSITIONS

In compliance with the Commission's prior orders requiring the same, AARP files its post hearing statement of issues.

BASIC POSITION

Progress Energy Florida could have and should have bought less expensive coal from non-affiliated companies during the time in question with the result that its customers would have paid substantially lower rates. Furthermore, it appears that Progress Energy Florida's actions of purchasing more expensive coal from affiliated companies, or more expensive coal that was necessarily transported by affiliated companies, were not only imprudent but were made intentionally in order to benefit the utility's parent corporation or affiliated companies. Based upon the evidence, AARP fully supports the Office of Public Counsel's case proving that imprudent purchases were made and knowingly so.

If the Commission finds that the utility not only acted imprudently by not buying the least-cost fuel available to it for the benefit of its customers, but did so intentionally in order to financially benefit its corporate parent or affiliates and at the financial detriment of its customers, then the Commission should impose a penalty in order to deter future conduct of this type by this utility or other utilities. All rates and charges

DOCUMENT NUMBER-DATE

03664 APR 30 08

FPSC-COMMISSION CLERK

approved by this Commission and charged by regulated utilities are statutorily required to be “fair and reasonable.” Buying more expensive coal when less expensive coal is readily available is not prudent and results in unfair and unreasonable rates.

The mere return through a refund of the monies imprudently charged, plus interest, which is simply the carrying cost of the transaction, is not sufficient to deter similar intentional conduct going forward. Section 366.095, F.S. specifically provides that such conduct may be penalized and Commission precedent and case law support such action. A penalty of ten percent of the refund, if any, should be imposed.

ISSUES AND POSITIONS

ISSUE 1: **Did PEF act prudently in purchasing coal for Crystal River Units 4 and 5 beginning in 1996 and continuing to 2005?**

POSITIONS:

AARP: *AARP adopts the position of the Office of Public Counsel.*

Environmental Permitting

AARP: *AARP adopts the position of the Office of Public Counsel.*

CR-3

AARP: *AARP adopts the position of the Office of Public Counsel.*

CR-4 & CR-5 Operational Matters

AARP: *AARP adopts the position of the Office of Public Counsel.*

Megawatt Capacity

AARP: *AARP adopts the position of the Office of Public Counsel.*

Coal Availability and Costs

AARP: *AARP adopts the position of the Office of Public Counsel.*

Affiliates

AARP: *AARP adopts the position of the Office of Public Counsel.*

Other Factors

AARP: *AARP adopts the position of the Office of Public Counsel.*

ISSUE 2: **If the Commission determines that PEF acted imprudently in its coal purchases, should PEF be required to refund customers for coal purchased to run Crystal River Units 4 and 5 during the time period of 1996 – 2005?**

POSITIONS:

AARP: *AARP adopts the position of the Office of Public Counsel.*

ISSUE 3: **Under the circumstances of this case, does the Commission have the authority to grant the relief requested by OPC?**

POSITIONS:

AARP: *AARP adopts the position of the Office of Public Counsel.*

ISSUE 4: **If the Commission determines that PEF should be required to refund customers for coal purchased to run Crystal River Units 4 and 5, what amount should be refunded, and how and when should such refund be accomplished?**

POSITIONS:

AARP: *AARP adopts the position of the Office of Public Counsel.*

ISSUE 5: **If the Commission determines that PEF willfully violated any lawful rule or order of the Commission or any provision of Chapter 366, Florida Statutes, should the Commission impose a penalty on PEF, and what should be the amount of such penalty?**

POSITIONS:

AARP: *Yes. Chapter 366, F.S. and the Commission’s relevant fuel adjustment orders require that all rates and charges demanded or received by any public utility for any service rendered shall be fair and reasonable. An intentional or willful act to financially harm customers in order to benefit a

corporate parent or affiliate is not “fair and reasonable.” Section 366.095, F.S. provides that the Commission may penalize a utility for willfully violating a lawful rule or order or law. Commission precedent and case law support a penalty.*

ISSUE 6: **Should this docket be closed?**

POSITIONS:

AARP: *AARP adopts the position of the Office of Public Counsel.*

Respectfully submitted,

/s/ Michael B. Twomey, Sr.

Michael B. Twomey, Sr.

Post Office Box 5256

Tallahassee, Florida 32314-5256

(850) 421-9530

miketwomey@talstar.com

For AARP

CERTIFICATE OF SERVICE

I hereby certify that a true copy of the foregoing has been furnished by electronic mail and U.S. Mail this 30th day of April, 2007 to the following individuals:

James W. Brew 1025 Thomas Jefferson Street, N.W. Eighth Floor, West Tower Washington, D.C. 20007 jbrew@bbrslaw.com	Office of Public Counsel P. Christensen/C. Beck/J. McGlothlin c/o The Florida Legislature 111 West Madison Street, Room 812 Tallahassee, FL 32399-1400
Young Law Firm R. Scheffel Wright/John LaVia 225 South Adams Street, Suite 200 Tallahassee, FL 32301	Lisa Bennett Office of General Counsel Florida Public Service Commission 2540 Shumard Oak Blvd. Tallahassee, FL 32399-0850
John W. McWhirter, Jr. c/o McWhirter Reeves 400 North Tampa Street, Suite 2450 Tampa, FL 33602 Email: jmcwhirter@mac-law.com	John T. Burnett/R. Alexander Glenn Progress Energy Service Company, LLC Box 14042 Saint Petersburg, FL 33733-4042
Cecilia Bradley Office of the Attorney General The Capitol – PL01 Tallahassee, Florida 32399-1050	Gary Sasso J. Walls D. Triplett Carlton Fields Law Firm P.O. Box 3239 Tampa, FL 33601-3239

/s/ Michael B. Twomey, Sr.