

ORIGINAL

Timolyn Henry

From: DAVIS.PHYLLIS [DAVIS.PHYLLIS@leg.state.fl.us]
Sent: Thursday, May 10, 2007 4:11 PM
To: Filings@psc.state.fl.us
Subject: FW: 070052-EI- Filing
Attachments: Joint Motion to Reschedule Evidentiary Hearing 050907.doc

On behalf of Joseph A. McGlothlin, Office of Public Counsel
111 W. Madison Street, Room 812
Tallahassee, FL 32399-1400
Email: mcglothlin.Joseph@leg.state.fl.us
Phone: (850) 488-9330
Fax: (850) 488-4491

1. This filing is to be made in Docket Number: 070052-EI, In re: 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's Joint Motion To Reschedule Evidentiary Hearing Or, In The Alternative, To Revise Procedural Milestones Of The Order On Procedure.
3. There are a total of six (6) pages for filing.

Phyllis W. Philip-Guide
Assistant to Patricia A. Christensen

CMP _____
COM _____
CTR _____
ECR _____
GCL _____
OPC _____
RCA _____
SCR _____
SGA _____
SEC _____
OTH *PH*

DOCUMENT NUMBER-DATE

03935 MAY 10 8

FPSC-COMMISSION CLERK

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: May 10, 2007

**JOINT MOTION TO RESCHEDULE EVIDENTIARY HEARING OR, IN THE
ALTERNATIVE, TO REVISE PROCEDURAL MILESTONES OF THE ORDER
ON PROCEDURE**

The Citizens of the State of Florida (“Citizens”), AARP, the Florida Industrial Power Users Group (“FIPUG”), and the Florida Retail Federation (“FRF”) hereby jointly move for an order rescheduling the evidentiary hearing in the above docket to a date no earlier than September 11, 2007, and adjusting the procedural milestones in a manner that will allow Intervenors to submit their prefiled testimony on or after July 2, 2007. The requested rescheduling is necessary to provide sufficient time for each Movant to properly prepare its case.

Alternatively, Citizens, AARP, FIPUG, and FRF move to amend Order Establishing Procedure No. PSC-07-0390-PCO-EI, dated May 2, 2007 (“OEP”). Because the time between the issuance of the OEP and the scheduled hearing date is allocated in a manner that results in nearly a month between the Prehearing Conference and the hearing date, the milestones in the OEP unnecessarily compress the time within which Movants may prepare and file their testimony in the docket.

In support of their Joint Motion, Citizens, AARP, FIPUG, and FRF state:

DOCUMENT NUMBER-DATE

03935 MAY 10 6

FPSC-COMMISSION CLERK

1. In the OEP, the Commissioners set the evidentiary hearing in this docket for August 7, 2007 and the date for intervenors' testimony as May 29, 2007. The OEP is effectively the "starting gun" with respect to many of the procedural requirements, such as enabling the parties to inform potential witnesses of the procedural dates. Given that the OEP was not issued until May 2, 2007, the hearing date chosen for the docket compresses the time available for case preparation. While the Joint Movants understand that the Commission decided to proceed to consider whether any prudent costs associated with the Crystal River 3 uprate project should be recovered through the fuel cost recovery clause or through base rates prior to the Siting Board's decision on the pending application of Progress Energy Florida Inc. ("PEF") for certification of its proposal, Joint Movants submit that PEF failed to show any need for an overly aggressive schedule that will, unless modified, constrain the ability of Joint Movants to prepare their testimony. On the other hand, the decision in this case will determine whether the utility's request to recover an investment of \$300+ million may be tempered by a consideration of the totality of the utility's circumstances, including the possible sufficiency of base rate earnings to absorb some or all of the costs without increasing rates borne by customers, or whether instead customers will bear the cost of the proposal as an increment to the fuel cost recovery factor. Joint Movants respectfully request the Commission to reschedule the hearing in this matter by setting the date of the evidentiary hearing no earlier than September 11, 2007 and by making corresponding changes to the deadlines for testimony. This addition of only five weeks to the hearing schedule will implement the

Commission's decision to proceed prior to the Siting Board's decision in a manner consistent with the need to afford the parties their rights to due process. PEF will not be prejudiced by this alternative hearing schedule.

2. In the event the Commission denies the request to reschedule the evidentiary hearing, in the alternative Joint Movants ask the Commission to amend the procedural dates in the OEP. Those dates unnecessarily compress the time available to parties to prepare for hearing. A logical and reasonable reapportioning of the time between the issuance of the OEP and the hearing date will alleviate some of the difficulty associated with the hearing schedule. Currently, for example, the testimony of Joint Movants is due only three weeks after the date of the OEP, but the order provides PEF with thirty days from that point to prepare and submit rebuttal testimony. The Prehearing Conference is scheduled for July 9, 2007, but the evidentiary hearing is not scheduled to begin until August 7, 2007—nearly a month after the prehearing conference. As alternative relief, Joint Movants request that the date for intervenors' testimony be modified from May 29, 2007 to June 19, 2007; that the date for Staff's testimony be moved from June 19, 2007 to July 5, 2007; that the rebuttal deadline be changed from June 28 to July 19; and that the Prehearing Conference be set for the latter portion of the week of July 23. This adjustment would distribute the time between the OEP and the hearing date in a fairer, more logical, and more productive manner than the existing schedule. It would provide needed case

preparation time without doing violence to any of PEF's legitimate procedural needs and without affecting the Commission's hearing date.

3. Counsel for Citizens has contacted Counsel for PEF regarding this motion. As of the time of filing, PEF has not indicated its positions on the alternative requests.

WHEREFORE, Citizens, AARP, FIPUG, and FRF request the Commission to reschedule the evidentiary hearing to a date no earlier than September 11, 2007 and establish the deadline for Intervenor to be a date no earlier than July 2, 2007.

In the alternative, the Joint Movants ask the Commission to modify the procedural milestones of the OEP in a manner consistent with the proposal set forth in this Joint Motion so as to provide more time for the completion of case preparation.

Charles J. Beck
Interim Public Counsel
Florida Bar No. 217281
Office of the Public Counsel
c/o The Florida Legislature
111 West Madison Street, Room 812
Tallahassee, Florida 32399-1400
850/488-9330
Fax: 850/488-4491

Attorney for the Citizens
Of the State of Florida

s/Patricia A. Christensen
Patricia A. Christensen
Associate Public Counsel
Florida Bar No. 989789
Office of the Public Counsel
c/o The Florida Legislature
111 West Madison Street, Room 812
Tallahassee, Florida 32399-1400
850/488-9330
Fax: 850/488-4491

Attorney for the Citizens
Of the State of Florida

s/Joseph A. McGlothlin
Joseph A. McGlothlin
Associate Public Counsel
Florida Bar No. 163771
Office of the Public Counsel
c/o The Florida Legislature
111 West Madison Street, Room 812
Tallahassee, Florida 32399-1400
850/488-9330
Fax: 850/488-4491

Attorney for the Citizens
Of the State of Florida

s/Robert Scheffel Wright
Robert Scheffel Wright
Florida Bar No. 966721
225 South Adams Street,
Suite 200
Tallahassee, Florida 32301
Phone: 850/222-7206
Fax: 850/561-6834

Attorney for the Florida
Retail Federation

s/John W. McWhirter, Jr.
John W. McWhirter, Jr., Esquire
McWhirter Law Firm
400 N. Tampa Street, Suite 2450
Tampa, FL 33602

Attorney for Florida Industrial
Powers Users Group

s/Michael B. Twomey
Michael B. Twomey
P.O. Box 5256
Tallahassee, FL 32314-5256
Phone: 850/421/9530
Fax: 850/421-9530

Attorney for AARP

DOCKET NO. 070052-EI
CERTIFICATE OF SERVICE

I, HEREBY CERTIFY that a true and correct copy of the Joint Motion To Reschedule Evidentiary Hearing Or, In The Alternative, To Revise Procedural Milestones Of The Order On Procedure has been furnished by electronic mail and U.S. Mail on this 10th day of May, 2007, to the following:

Paul Lewis
Progress Energy Florida, Inc.
106 E. College Ave., Suite 800
Tallahassee, FL 32301-7740

James M. Walls/Dianne M. Tripp
P.O. Box 3239
Tampa, FL 33607-5736

John T. Burnett/R. Alexander Glenn
Post Office Box 14042
St. Petersburg, FL 33733

John McWhirter
McWhirter Reeves Law Firm
400 N. Tampa Street, Ste. 2450
Tampa, FL 33602

Administrative Procedures Committee
Room 120 Holland Building
Tallahassee, FL 32399-1300

Mike Twomey
P.O. Box 5256
Tallahassee, FL 32314

Dept. of Community Affairs
Valerie Hubbard
Division of Community Planning
2555 Shumard Oak Blvd.
Tallahassee, FL 32399-2100

Beth Keating
106 E. College Ave. Ste. 1200
Tallahassee, FL 32301

Department of Environmental Protection
Buck Oven/Michael P. Halpin
2600 Blairstone Road MS 48
Tallahassee, FL 32301

Fla. Cable Communications Assoc.
246 E. 6th Avenue, Ste. 100
Tallahassee, FL 32303

Lisa Bennett
Florida Public Service Commission
2540 Shumard Oak Blvd.
Tallahassee, FL 32399-0850

Robert Scheffel Wright
225 S. Adams Street, Ste. 200
Tallahassee, FL 32301

s/ Joseph A. McGlothlin
Joseph A. McGlothlin
Associate Public Counsel