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Subject: E-filing (Dkt. No. 060658-EI)

Attachments: 060658.Motion for Reconsideration.sversion.doc

Electronic Filing

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b. Docket No. 060658-EI

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

c. Document being filed on behalf of Office of Public Counsel

d. There are a total of 11 pages.

e. The document attached for electronic filing is Office of Citizen's Motion for Reconsideration.

(See attached file: 060658.Motion for Reconsideration.sversion.doc)

Thank you for your attention and cooperation to this request.

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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 to customers $143 million	)	Docket No. 060658-EI Filed: October 25, 2007

CITIZENS' MOTION FOR RECONSIDERATION

Pursuant to Rule 25-22.060, Florida Administrative Code, the Citizens of the State of Florida, through the Office of Public Counsel, request the Commission to reconsider certain aspects of the decision memorialized in Order No. PSC-07-0816-FOF-EI, issued on October 10, 2007, and state:

1. By petition filed on August 10, 2006, Citizens urged the Commission to require Progress Energy Florida, Inc. ("PEF") to refund to its customers overcharges relating to unreasonably high costs of fueling its coal-fired Crystal River Units 4 and 5 during the period 1996-2005. Specifically, Citizens asserted that during this time frame, to minimize fuel costs borne by customers PEF should have been burning in Crystal River Units 4 and 5 the 50/50 blend of subbituminous and bituminous coals that, at the instance of PEF's predecessor, served as the basis for the design and construction of the units.

2. In the decision memorialized in Order No. PSC-07-0816-FOF-EI, the Commission directed PEF to refund $12,425,492 plus interest to its customers. The

refund was based upon the Commission's finding that PEF should have burned in Crystal River Units 4 and 5 a blend of coals containing 20% subbituminous coal from the Powder River Basin during calendar years 2003, 2004, and 2005.

3. Citizens are mindful that the standard of review during reconsideration of an order is limited to the identification of mistakes and the treatment of factual and legal matters that the Commission overlooked or misapprehended. Stewart Bonded Warehouse, Inc. v. Bevis, 294 So.2d 315 (Fla. 1974); Diamond Cab Co. v. King, 146 So.2d 889 (Fla. 1962); and Pingree v. Quaintance, 394 So.2d 161 (Fla. 1st DCA 1981). Accordingly, without abandoning any of the positions regarding time frames, blend levels, and calculation methodologies that they advocated during the evidentiary phase of the proceeding, Citizens will limit their motion for reconsideration to the significant mistakes and matters that the Commission overlooked or misapprehended in reaching the decision and that caused the Commission to understate the overcharges relating to calendar years 2003, 2004, and 2005 that should be refunded to customers.

4. ***The Commission overlooked or misapprehended key evidence when establishing the percentage of PRB coal to include in the blend for purposes of calculating the refund. On reconsideration, the Commission should take into account evidence of record that conservatively supports the use of 30% PRB in the refund calculation.*** When establishing the elements of the calculation of overcharges, the Commission settled on a blend containing only 20% PRB coal.[1] In reaching this

[1] The Commission also decided to apply the 20% ratio to only the portion of coal destined for Crystal River Units 4 and 5 that travels to Crystal River by barge—a decision related to the view that PEF should not

determination, the Commission misapprehended the import of the Sargent & Lundy study that PEF commissioned to evaluate the ability of Crystal River Units 4 and 5 to operate with PRB coal while maintaining the 5% steam overpressure condition that enables the units to generate 750 MW of electricity. In addition, the Commission misapprehended the clear ramification of the testimony of one of PEF's witnesses that the Commission cited as a basis for using only 20% PRB in the calculation of overcharges, and overlooked representations by PEF to the Florida Department of Environmental Protection that reveal PEF's own conviction regarding the capability of Crystal River Units 4 and 5 to accommodate at least 30% PRB coal in the mixture.

a. The Sargent &Lundy Study

At page 28 of Order No. PSC-07-0816-FOF-EI, the Commission stated:

> "In 2005, PEF hired Sargent & Lundy to assess the use of PRB coal at CR4 and CR5. That study indicated that a blend under 30% was likely to prove cost effective. Blending off-site was recommended in that report as well.[2]

This passage of the order misapprehends and mischaracterizes the S&L study. The firm of Sargent & Lundy was directed by PEF to review three scenarios. The first, prescribed by PEF, was to assume a blend containing <30% PRB coal. (This is the scenario that Order No. PSC-07-0816-FOF-EI mentions.) Another was to assess the use

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blend pure PRB coal and bituminous coal at Crystal River. Citizens disputed this contention during the evidentiary phase. For the limited purposes of reconsideration, Citizens have not included this issue in their motion. However, bearing in mind that the refund is a function of the more economical PRB content of the blend and the quantity of CR4-CR5 coal to which it is applied, the fact that the Commission decided to apply the PRB factor to approximately half the coal burned in Crystal River Units 4 and 5 in the calculation of the refund underscores the need to identify a blend ratio that does not understate the capability of the units. For instance, the 20% PRB factor that the Commissioners voted to employ translates to only about 10% PRB coal in the total burn requirements of Crystal River Units 4 and 5.

[2] In fact, Sargent & Lundy did not "recommend" off-site blending; rather, PEF instructed Sargent & Lundy to assume the coals would be blended off-site. As Sargent & Lundy put it, "On-site blending was not to be considered." Study, at page 7 of 35.

of 100% PRB coal. *The third task assigned to Sargent & Lundy by PEF was to ascertain the point at which increasing the PRB content in a PRB/bituminous blend would cause PEF to incur significant operational issues and/or capital costs.* Here is Sargent & Lundy's conclusion, which the Commission overlooked:

> For all blend cases the objective was to continue to maintain the current unit maximum operating capability at valves wide open and 5% overpressure. . . .The two base scenarios identified for the study were the burning of less than 30% PRB and 100% PRB. The other scenario to be considered was a blend with PRB coal between 30% and 90% where a major performance and/or cost impact would occur. ***For this study this breakpoint turned out to be 70% PRB.***[3]

S&L study, Exhibit 74, at page 7 of 35. (emphasis provided)

In its report, Sargent & Lundy concluded that PEF could operate Crystal River Units 4 and 5 at the 5% overpressure condition associated with generating 750-770 MW and without incurring major capital investments if it used less than ***70%*** PRB coal in the blend. While the Sargent & Lundy firm also answered the <30% PRB scenario assigned to it in the affirmative, to construe the study as supporting no more than a 30% blend is to misapprehend and mischaracterize key evidence that, when properly viewed on reconsideration, supports the ability of the units to accommodate successfully far more than the 30% PRB ratio that the Commission attributes to the study in Order No. PSC-07-0816-FOF-EI. It demonstrates that, based on the existing evidence of record, the Commission can base a refund on 30% PRB while maintaining its desire to be both conservative with respect to limiting the refund to that which is supported by evidence of

[3] Sargent & Lundy noted that Progress Energy directed it to assume a blend of PRB and Illinois coal. "Progress Energy stated that it is more likely that blending would be done with PRB coal and a higher heating value Central Appalachian coal. The use of Illinois coal for this study was deemed to be a more conservative approach." Exhibit 74, page 7 of 35.

record and effective in insulating customers from demonstrably unreasonable fuel charges.

b. Mr. Toms' testimony

In Order No. PSC-07-0816-FOF-EI, the Commission cited the testimony of PEF witness Toms en route to concluding that it should include only 20% PRB in the calculation of the refund. Mr. Toms testified that Crystal River Units 4 and 5 experienced decreased output when the Btu content of the coal being delivered to the boilers fell below the range of 11,000 to 11,300 Btus per pound. (See page 30 of Order No. PSC-07-0816-FOF-EI.) In their brief, when countering PEF's claim that PEF could not burn the 50/50 design basis blend in the units without a derate, Citizens pointed out that Mr. Toms admitted during cross-examination that the decrease in output occurred because plant operators did not increase the rate at which the coal was being fed to the boilers to compensate for the lower Btu content of the coal; once the feeder speed was adjusted to compensate for the lower Btu content, output returned to the desired level of 750 MW. (TR-729-730). Putting aside this point for the limited purpose of Citizens' more narrow motion for reconsideration, Citizens now direct the Commission to a separate factual point that the Commission overlooked. This separate point demonstrates that, based on Mr. Toms' testimony, the Commission understated the percentage of PRB coal that should serve as the basis for a calculated refund. Specifically, the Commission overlooked the fact that, even if one accepts Mr. Toms' initial assertion regarding the need for coal containing 11,000 to 11,300 Btus per pound, *that criterion is met* with a blend containing 30% PRB coal and 70% Central Appalachian coal, *without adjustments*

of any kind. Assuming PRB coal containing 8,800 Btus per pound and Central Appalachian coal containing 12,500 Btus per pound of coal, the 30/70 blend would contain 11,390 Btus per pound—which is above the breakpoint identified by Mr. Toms in testimony and cited by the Commission in Order No. PSC-07-0816-FOF-EI. Accepting PEF's witness's concern at face value for purposes of the Motion for Reconsideration, the testimony cited by the Commission in Order No. PSC-07-0816-FOF-EI supports the use of 30% PRB, not 20% PRB, as the appropriate basis for remedying the fuel overcharges borne by customers during 2003, 2004, and 2005.

c. PEF's representations to the Florida Department of Environmental Protection

With respect to the question of the appropriate percentage of PRB coal to assume in the calculation of the refund, the Commission overlooked the import of Hearing Exhibits 223 and 224. Each of these exhibits contains representations made by PEF to the Florida Department of Environmental Protection that bear on the selection of the ratio of PRB coal to use in calculating the refund. In Exhibit 223, which is an excerpt from PEF's application for authority to conduct the May 2006 test burn, PEF stated that a blend containing up to a maximum of 30% PRB coal would have "characteristics that closely match those of the bituminous coal types that are currently being burned." For this reason, the exhibit says, PEF earlier had asserted to the FDEP that Units 4 and 5 are "capable of accommodating the blend" and that the FDEP should not have required PEF to obtain a modified air permit before proceeding to burn the up-to-30% PRB mixture.

Exhibit 224 is the FDEP's technical evaluation of PEF's application for a permanent permit authorizing the burning of a PRB/bituminous mixture following the successful May 2006 test burn. The FDEP noted:

> The applicant proposes to fire a blend ***of up to 50% by weight sub-bituminous*** coal with bituminous coal. . . . In support of the request, the applicant previously obtained an air construction permit and conducted a test burn of 18% by weight Powder River Basin coal (a subbituminous coal) with bituminous coal. ***The applicant proposes to begin firing such blends upon issuance of the final permit granting authorization.*** The proposed new blend would only be fired in units 4 and 5.

Exhibit 224, at page 10 of 27 (emphasis supplied)

In Order No. PSC-07-0816-FOF-EI, the Commission noted that an internal engineering study by PEF indicated that a 30% PRB blend would behave like bituminous coal. Even more significant, in terms of the standard to which the Commission should hold PEF, is the fact that PEF represented to the FDEP that the properties of a blend containing 30% PRB coal are so similar to those of the bituminous coal it was burning at the time that PEF should not be required to obtain a permit, and the fact that, subsequent to the May 2006 test burn, PEF sought authority to burn a blend containing up to 50% PRB coal. The Commission did not take either exhibit into account in the analysis memorialized in the final order.

CONCLUSION AND PRAYER FOR RELIEF

It appears to Citizens that the overriding consideration that led the Commission to designate 20% PRB coal as the basis for calculating the refund was its desire to be "conservative" with respect to the refund that the evidence of record supports. It therefore looked primarily to the percentage of PRB coal in the blend that was tested in May 2006. However, properly viewed, the Sargent & Lundy study, which was

deliberately conservative in its assumptions and approach, supports a blend containing far more than 30% PRB coal. Properly viewed, Mr. Toms' testimony proves that a blend containing 30% PRB will satisfy the Btu threshold and the related operational concerns to which the Commission referred in Order No. PSC-07-0816-FOF-EI. Properly taken into account, Exhibits 223 and 224 record definite, substantive representations by PEF to the Florida Department of Environmental Protection regarding the bituminous-like properties of a 30% PRB blend and the capabilities of the units to which PEF should be held when calculating the refund. Collectively, the matters that the Commission earlier overlooked or misapprehended prove that a blend containing 30% PRB coal is conservative with respect to the remedy supported by evidence of record, at the same time it more fairly treats ratepayers. Simultaneously, they prove that the 20% PRB ratio that the Commission employed in Order No. PSC-07-0816-FOF-EI is inadequate to perform the Commission's function of insulating customers from demonstrably unreasonable fuel charges. In short, PEF's choice of a 20% test burn—which, after all, was a matter of management discretion and not a measurement of the units' capabilities—must give way to evidence of record that conservatively demonstrates a higher, more adequate basis for relief. Accordingly, Citizens request the Commission to reconsider its decision, and recalculate the refund of overcharges borne by customers in 2003, 2004, and 2005 by replacing 20% PRB coal with 30% PRB coal in the calculation.

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DOCKET NO. 060658-EI

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of **CITIZENS' MOTION FOR RECONSIDERATION** has been furnished by electronic mail and U.S. Mail on this 25th day of October 25, 2007, to the following:

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