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Public Service Commission

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TALLAHASSEE, FLORIDA 32399-0850

-M-E-M-O-R-A-N-D-U-M-

DATE: February 24, 2009

TO: Office of Commission Clerk (Cole)

FROM: Office of the General Counsel (Bennett, Brown) *SPMCB* *LCB* *182* *W*
Division of Economic Regulation (Willis)

RE: Docket No. 090079-EI – Petition for increase in rates by Progress Energy Florida.

AGENDA: *03-AC* 03/02/09 – Regular Agenda – Emergency Rule Waiver - Interested Persons May Participate

COMMISSIONERS ASSIGNED: All Commissioners

PREHEARING OFFICER: Skop

CRITICAL DATES: 03/13/09 - Emergency Rule Waiver Petition deemed approved if not granted or denied within 30 days of receipt

SPECIAL INSTRUCTIONS: None

FILE NAME AND LOCATION: S:\PSC\GCL\WP\090079.RCM.DOC

Case Background

On February 12, 2009, Progress Energy Florida, Inc. (PEF) filed its Test Year Letter, in anticipation of filing its request for a rate increase. PEF also filed a Petition for Emergency Variance or Waiver of the 60-Day Notice Requirement in Rule 25-6.140, Florida Administrative Code (F.A.C.) (Emergency Petition). On February 13, 2009, the Commission gave notice of the Emergency Petition on its website and by electronic mail to the intervenors of record, the Office of Public Counsel (OPC) and the Attorney General's Office (AGO). The Commission also provided notice of the petition to the Department of State for publication in the first available issue of the Florida Administrative Weekly. OPC and AGO filed a response objecting to PEF's Emergency Petition on February 16, 2009. The Florida Retail Federation (FRF) filed a response

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objecting to the Emergency Petition on February 18, 2009, the same day it filed a petition to intervene.

Rule 25-6.140, F.A.C. provides that a utility shall notify the Commission in writing of its selected test year and filing date at least 60 days prior to filing a petition for a general rate increase. PEF requested, on an emergency basis, that the Commission waive the 60-day requirement. PEF filed its test year letter on February 12, 2009. PEF wishes to file its petition on March 20, 2009, 36 days after filing its test year letter. On February 20, 2009, the parties and staff met to discuss the emergency petition and responses. As a result of that meeting, on February 23, 2009, PEF, OPC, AGO, FRF and PCS filed an Agreed Motion on Procedure (Attachment A), in which PEF agreed to withdraw its petition for emergency rule waiver and the other parties agreed to withdraw their responses. The movants also agreed that any waiver of Rule 25-6.140, F.A.C., subject to the approval of the Commission, should be deemed granted by approval of the motion on procedure, with PEF to file its petition for a rate increase on or before March 20, 2009.

The movants also agreed to the appropriateness of the September shadow hearing dates currently scheduled for PEF's rate case and urged that the dates be adopted in the Order Establishing Procedure (OEP) for the case. They agreed to seek informal meetings with the Commission staff to provide input on scheduling of other intermediate hearing dates, filing dates and other dates included in the OEP. Further, the movants acknowledged OPC's interest in reviewing and providing input on the number and location of customer hearings to be held in the case.

This recommendation addresses the parties' agreed motion on procedure. The Commission has jurisdiction pursuant to Sections 120.54, 120.542, 350.127(2), and 366.06, Florida Statutes (F.S.).

Discussion of Issues

Issue 1: Should the Commission approve the Agreed Motion on Procedure?

Recommendation: Yes. The Commission should approve the motion and permit PEF to file its petition for general rate increase on March 20, 2009. With the clear understanding that the Commission has the ultimate authority and responsibility to determine the schedules of its cases, the Commission should approve the parties' desire to provide input into the scheduling of this case, to the extent possible; but the ultimate decision on scheduling must be the Commission's prerogative. (Brown, Bennett, Willis)

Staff Analysis: Order No. PSC-05-0945-S-EI, issued September 28, 2005, in Docket No. 050078, In re: Petition for rate increase by Progress Energy Florida, Inc., approved a stipulation and settlement agreement between PEF and several parties, including OPC, AGO, and FRF. The stipulation and settlement agreement provides that:

The Stipulation is effective for a term of four years – the first billing cycle in January 2006 (implementation date) through the last billing cycle in December 2009; however, PEF may extend the term of the Stipulation through the last billing cycle of June 2010, upon written notice to the parties to the Stipulation and to the Commission, on or before March 1, 2009.

With the understanding that PEF must have new rates in effect by January 1, 2010, nine days of hearing were scheduled for PEF in September, which gives parties ample opportunity to file briefs so that the Commission can make a final decision by December 1, 2009.

The Rule 25-6.140, F.A.C., 60-day filing requirement assists the Commission and its staff in the planning and preparation of rate cases with statutory deadlines. The rule can also assist interested persons and parties with their planning and preparation. Under the circumstances of this case, however, permitting PEF to file its rate petition and MFRs early will provide the parties and staff more time to conduct the case by almost three weeks. In addition, because of the terms of the 2005 settlement agreement, many should have been aware that PEF would most likely be filing a rate case around this timeframe. The parties agree that having more time to prepare testimony and conduct discovery is preferable. That is particularly so here, because of the number of complex cases scheduled for hearing through the Fall, many of which involve the same intervenors. Staff believes that approval of the agreed upon waiver of Rule 25-6.140, F.A.C., is appropriate.

In general, staff also believes that input by parties concerning critical hearing activities may prove helpful in assisting the Commission in planning and scheduling large, complex dockets. However, the Commission is constrained by certain statutory timeframes, and the need to afford adequate due process to all parties, as well as to allow Commission staff a sufficient opportunity to analyze the evidence and present its post-hearing recommendation. Staff would therefore like to clarify that the latter items in the motion, specifically items 6, 7, and 8, are aspirational in nature. While staff does not object to conferring with parties regarding particular scheduling concerns, ultimately the Commission has the responsibility and the authority over the

scheduling of its proceedings. To ensure that its statutory responsibilities are met, and to ensure reasonable due process to all participants before the Commission, it cannot delegate or share that authority. With that understanding, however, staff recommends that the Commission approve the parties' motion to provide input into the scheduling process.

The parties' agreed motion on procedure resolves their disagreement over PEF's emergency waiver petition, while ensuring that the parties and staff will have additional time to process PEF's rate case. Therefore, staff recommends that the Commission approve the motion. The Commission should indicate to the parties that it will work with them where possible to establish the hearing schedule, but the ultimate decision on scheduling must be the Commission's prerogative.

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Issue 2: Should this docket be closed?

Recommendation: No. This docket should remain open to process PEF's petition for a rate increase.

Staff Analysis: This docket should remain open to process PEF's petition for a rate increase.

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Petition for Rate Increase by)
Progress Energy Florida)
_____)

Docket No. 090079-EI

Filed: February 23, 2009

AGREED MOTION ON PROCEDURE

The Office of the Public Counsel (“OPC”), Attorney General, The Florida Retail Federation, PCS Phosphate and Progress Energy Florida (“PEF”) (together, “Joint Movants” or “Movants”) jointly file this Agreed Motion on Procedure, stating their agreement as follows herein and requesting as follows:

On February 12, 2009 PEF filed its Test Year Notification letter indicating its intent to initiate a rate case. The other Joint Movants have filed pleadings establishing or seeking Intervenor status.

On February 12, 2009, PEF also filed a Petition for Emergency Variance or Waiver Of The 60-Day Notice Requirement in Rule 25-6.140, F.A.C. (“Petition”). The Public Counsel, Attorney General and the Florida Retail Federation filed responses to the Petition.

Subsequently, the Joint Movants have had discussions regarding the Petition and Responses and have agreed that the respective positions contained therein can be efficiently resolved by agreement to do and/or seek the following actions -- all of which are mutually dependent upon the execution of each action by each Movant and the acceptance and approval by the Commission of the requested actions:

1. PEF agrees to withdraw its Petition and has concurrently filed notice of such;

2. The Public Counsel and the Attorney General agree to withdraw their Response and have concurrently filed notice of such;
3. The Florida Retail Federation agrees to withdraw its Response and has concurrently filed notice of such;
4. The Movants agree that any waiver of Rule 25.6-140, F.A.C., that might be required to accommodate the schedule set forth below shall, subject to approval by the Commission, be deemed granted by the issuance of an order approving this motion;
5. PEF will file its Minimum Filing Requirements (“MFRs”) on or before March 20, 2009;
6. The Joint Movants agree to the appropriateness of the dates of September 14, 16-18, and 21-25, 2009 for the evidentiary hearings in this Docket. The Movants recognize that the scheduling of the hearing dates is generally a matter within the purview of the Prehearing Officer and the Commission Chairman as those responsibilities are allocated by the Commission’s internal procedures. In this vein, the Movants urge that these dates be adopted in the Order Establishing Procedure (OEP);
7. The Movants further agree among themselves to seek informal meeting(s) with Staff to explore opportunities for each to provide input on the scheduling of other intermediate hearing dates, filing dates, and other procedural dates to be recommended for inclusion in the OEP; and
8. Additionally, the Movants acknowledge that the Office of the Public Counsel has indicated a desire to review and provide input to the number and location of customer hearings to be held in this docket. The Movants support the Public Counsel’s request to provide such input.

As a result of this agreed upon Motion, the Movants agree that all matters raised in the Petition and Responses are resolved satisfactorily upon the completion of items 1-6, above. Furthermore

the Movants assert that favorable consideration by the Commission on items 7 & 8 are integral to the agreement contained in this Joint Motion. As such, the Joint Movants urge that the Commission act to facilitate each agreed upon action as appropriate.

This Agreement may be executed in counterparts each of which shall be deemed an original, and all of which together shall constitute one and the same instrument.

Respectfully submitted and dated this 23rd day of February, 2009,

Respectfully submitted,

/s/ Charles Rehwinkel
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