

Ruth Nettles

From: ROBERTS.BRENDA [ROBERTS.BRENDA@leg.state.fl.us]
Sent: Tuesday, March 24, 2009 9:07 AM
To: Filings@psc.state.fl.us
Cc: Dianne Triplett; James M. Walls; John Burnett; John McWhirter; Keino Young; Lisa Bennett; Paul Lewis; R. Alexander Glenn; vkaufman@kagmlaw.com
Subject: e-filing (Dkt. 070703-EI)
Attachments: 070703 motion to strike-motion in limine.sversion.doc

Electronic Filing

a. Person responsible for this electronic filing:

Joseph A. McGlothlin, Associate Public Counsel
Office of Public Counsel
c/o The Florida Legislature
111 West Madison Street, Room 812
Tallahassee, FL 32399-1400
(850) 488-9330
mcglothlin.joseph@leg.state.fl.us

b. Docket No. 070703-EI

In re: Review of coal costs for Progress Energy Florida's Crystal River Unites 4 and 5 for 2006 and 2007

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

d. There are a total of 4 pages.

e. The document attached for electronic filing is OPC's Motion to Strike and Motion in Limine.
(See attached file: 07070 motion to strike-motion in limine.sversion.doc)

Thank you for your attention and cooperation to this request.

Brenda S. Roberts
Office of Public Counsel
Telephone: (850) 488-9330
Fax: (850) 488-4491

3/24/2009

DOCUMENT NUMBER-DATE

02559 MAR 24 8

FPSC-COMMISSION CLERK

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In Re: Review of coal costs for Progress)
Energy Florida's Crystal River Units 4)
and 5 for 2006 and 2007)
_____)

Docket No. 070703-EI

Filed: March 24, 2009

OPC'S MOTION TO STRIKE AND MOTION IN LIMINE

The Citizens of the State of Florida, through the Office of Public Counsel, hereby file their Motion to Strike a certain portion of the rebuttal testimony of Sasha Weintraub, witness for Progress Energy Florida Inc. (PEF). Citizens also file their Motion in Limine regarding any effort by PEF to refer to certain prefiled testimony that was withdrawn by Citizens and is not being sponsored by any party. In support, Citizens state:

1. In Docket No. 060658-EI, the Commission considered a petition by Citizens in which Citizens asserted that PEF incurred costs of coal for fueling its Crystal River Units 4 and 5 that were unreasonably high during the period 1995-2005.
2. In Docket No. 070001-EI, in the routine course of the issues that it addresses in the ongoing fuel cost recovery proceeding, the Commission considered the costs that the utilities incurred in calendar year 2006. On the deadline for Intervenor testimony, Citizens submitted the prefiled testimony of Robert Sansom.
3. On October 4, 2007, PEF filed in Docket No. 070001-EI a motion to spin off the issues related to the cost of fuel at Crystal River Units 4 and 5 during 2006 and 2007 into a separate docket. The Commission granted the motion in Order No.

DOCUMENT NUMBER-DATE

02559 MAR 24 8

FPSC-COMMISSION CLERK

PSC-07-0842-FOF-EI, dated October 17, 2007. The Commission Clerk administratively moved the prefiled testimony of Mr. Sansom from Docket No. 070001-EI to the new docket, Docket No. 070703-EI on December 21, 2007.

4. As Docket No. 070703-EI, progressed, Citizens engaged David J. Putman to serve as Citizens' witness on all issues in the docket. Citizens formally withdrew the prefiled testimony of Mr. Sansom on January 30, 2009.¹ On February 2, 2009, Citizens submitted the prefiled testimony of its witness, David J. Putman. In his testimony, Mr. Putman develops his analysis of the issues raised by Citizens in the proceeding and, based on that analysis, supports a refund of unreasonably high fuel costs associated with Crystal River Units 4 and 5 in 2006 and 2007. The basis for Mr. Putman's conclusions and recommendations are set forth in detail in his testimony and exhibits.
5. On March 13, 2009, PEF deposed Mr. Putman. During the deposition, counsel for PEF referred to the withdrawn testimony of Mr. Sansom in an effort to compare and contrast the methodology and calculations of Mr. Sansom with the different methodology and calculations of Mr. Putman.
6. Citizens withdrew the testimony of Mr. Sansom. Having been withdrawn, and having never been sponsored from the witness stand, the former prefiled testimony has no status in this case. It is not going to be sponsored by Citizens or by any other party. Accordingly, it is inappropriate for PEF to refer to it. PEF may seek to cross-examine Mr. Putman on the content of his testimony based on the merits of Mr. Putman's approach, but inasmuch as the withdrawn testimony is not being

¹ Mr. Sansom is now deceased.

sponsored by any party, including PEF, references to the withdrawn testimony and/or efforts to introduce any portion of it into evidence would be inappropriate.

Accordingly, Citizens move for an order striking the reference to the following phrase at line 2, page 3 of the testimony of PEF rebuttal witness Mr. Weintraub: "... a fact that even OPC's prior witness Sansom did not agree with." Citizens further move for an order prohibiting PEF from referring to the withdrawn testimony and from seeking to introduce any portion of the withdrawn testimony into evidence during the hearing scheduled to begin on April 13, 2009.

J.R. Kelly
Public Counsel

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

Office of Public Counsel
c/o The Florida Legislature
111 West Madison Street
Room 812
Tallahassee, FL 32399-1400

Attorney for the Citizens
of the State of Florida

DOCKET NO. 070703-EI
CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing **OPC'S MOTION TO STRIKE**
AND MOTION IN LIMINE has been furnished by U.S. Mail to the following parties
on this 24th day of March, 2009.

Keino Young, Esquire
Lisa Bennett, Esquire
Division of Legal Services
Florida Public Service Commission
2540 Shumard Oak Blvd.
Tallahassee, FL 32399-0850

Paul Lewis, Jr.
Director, Regulatory
Progress Energy Florida
106 E. College Ave., Suite 800
Tallahassee, FL 32301

R. Alexander Glenn, Esquire
John T. Burnett, Esquire
Progress Energy Service Co., LLC
Post Office Box 14042
St. Petersburg, Florida 33733-4042

James Michael Walls, Esq.
Dianne M. Triplett, Esq.
Carlton Fields, P.A.
Post Office Box 3239
Tampa, FL 33601-3239

John McWhirter
McWhirter, Reeves Law Firm
P.O. Box 3350
Tampa, FL 33601-3350

s/ Joseph A. McGlothlin
Joseph A. McGlothlin