BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Petition for Rate Increase by Progress Energy Florida	Docket No. 090079-EI
In re: Petition of Progress Energy Florida, Inc. For Expedited Approval of the Deferral of Pension Expenses, the authorization to Charge Storm Hardening Expenses to the Storm Damage Reserve and the Variance or Waiver of Rule 25-6.0143(1) (c), (d), and (f), F.A.C.	Docket No. 090145-EI
In re: Petition of Progress Energy Florida, Inc. for a limited proceeding to include the Bartow Repowering project in base rates	Docket No. 090144-EI
_____/	Filed: April 3, 2009

JOINT INTERVENORS' CONSOLIDATED RESPONSE TO PROGRESS ENERGY FLORIDA'S REQUEST FOR INTERIM RELIEF; PETITION RELATED TO ACCOUNTING TREATMENT FOR PENSION AND STORM HARDENING EXPENSES AND PETITION FOR LIMITED PROCEEDING TO INCLUDE THE BARTOW REPOWERING PROJECT IN BASE RATES

The Citizens of Florida, through the Office of Public Counsel ("OPC" or "Citizens"), The Florida Industrial Power Users Group ("FIPUG") Attorney General, The Florida Retail Federation, PCS Phosphate ("Intervenors") file their response to Requests and/or Petitions of Progress Energy Florida, Inc. ("PEF") for Interim Relief; Petition Related to Accounting Treatment for Pension and Storm hardening expenses and Petition for a Limited Proceeding to include the Bartow Repowering Project in Base Rates. The Intervenors object to the granting of interim, expedited and/or limited proceeding relief under the circumstances of this case.[1] Furthermore, Intervenors dispute that PEF is entitled to any interim relief as a result of this filing. The reasons for our objections are as follows:

[1] As a matter of law and under the circumstances of this case and as will be discussed below, PEF should only be entitled to rate relief within the evidentiary schedule established for Docket No. 090079-EI.

PEF has filed these petitions for limited and interim relief concurrently with its request for permanent base rates relief in the amount of approximately $500 million. All of these requests were filed two days after Florida Power & Light ("FPL") filed a request for permanent base rate increase of more than $1 billion per year.

The requests were also made after a scheduling conference was held with various intervenors, Public Service Commission ("Commission" or "PSC") Staff, PEF and FPL. At that meeting, the Staff expressed concern about the Commission's calendar being "extremely full for late Summer and the Fall." During the meeting it was made clear that Staff and Commission resources were strained. In extensive discussions about scheduling options, it became abundantly clear that virtually every remaining day will be vital for conducting discovery, preparing testimony and for general hearing preparation. PEF made no mention to the other meeting participants, including Staff that it would be petitioning separately for other relief. See Attachment A (Staff email correspondence regarding case scheduling).

The Intervenors are responding to all of PEF's "interim" requests in this single pleading because we believe that they are all fundamentally and inextricably tied to the Stipulation approved in Docket No. 050078-EI ("Stipulation"). See Order No. PSC-05-0945-S-EI ("Order") at 15. Intervenors further contend that all of the substantive matters involved here, including rates, earnings, Bartow, and PEF's proffered accounting issues, should be considered – if at all – in the rate case.[2] (As discussed in detail below, PEF's request for interim rate relief is plainly not allowed under either the Stipulation or the interim relief statute.)

PEF made the choice to file these matters separately, which unduly complicates the rate case. PEF also made the decision to file its requests in March 2009, rather than earlier, also unduly complicating the rate case, and more importantly, creating a situation that is unworkable, unreasonable, and unfair. Intervenors believe that unified consideration is appropriate – if at all – in the rate case since (a) granting certain of the interim/limited relief requested will have an unknown but material impact on the revenue requirements considered in the rate case and (b) there is insufficient time to provide the required hearing on all issues other than the interim relief

[2] PEF's Base Rates Petition also notes at pages 1-2 the close linkage between all the above styled dockets

request, which is impermissible on its face. Moreover, attempting to hold such a required hearing would violate Commission precedent (see below) and prejudice the Intervenors' and other parties' ability to prepare for the base rate proceeding. For these reasons this pleading is being filed in Docket Nos. 090079-EI, 090144-EI and 090145-EI.

To the extent that the Commission considers these requests independently, the Intervenors request that the relevant portions of this consolidated response be considered as our response in the respective individual dockets. Nevertheless, to the extent that these matters are inextricably related to PEF's request for rate relief, the Intervenors strongly assert that they should be disposed of as a part of the general rate case, i.e., in the Commission's ultimate votes on PEF's request for a permanent increase in rates in Docket No. 090079-EI. However, each of PEF's three special requests for early earnings or rate relief should be denied for the reasons set out below.

(DOCKET NO. 090079-EI)
INTERIM RATE INCREASE

As part of its ***Petition*** in Docket 090079-EI ("Base Rates Petition"), PEF has requested an interim rate increase of $13.1 million. This request is based on an erroneous belief that the Stipulation has created an ROE floor of 10% for purposes of determining interim relief under a "make-whole" concept. Intervenors vigorously object to this interpretation as contrary to the plain meaning of the Stipulation and the revenue sharing mechanism that it established. PEF specifically requests that interim relief be granted pursuant to s. 366.071, Fla. Stat. This relief is not available to the Company and PEF's request should be denied.

The stipulation clearly prohibits the awarding of interim relief during the term of the stipulation. In relevant part, it states:

> 7. If PEF's retail base rate earnings fall below a 10% return on equity as reported on a Commission adjusted or pro-forma basis on a PEF monthly earnings surveillance report during the term of the Agreement, PEF may petition the Commission to amend its base rates notwithstanding the provisions of Section 4[3],

[3] This paragraph relates to prohibitions on changing the Stipulation, allowing PEF to make rate decreases, containing certain time limitations on others seeking reductions, and prohibiting PEF from converting traditional base rate costs to surcharge recovery (Footnote added)

> either as a general rate proceeding or as a limited proceeding under Section 366.076, F.S. The Parties to this Agreement are not precluded from participating in such a proceeding, and, in the event PEF petitions to initiate a limited proceeding under this Section, any Party may petition to initiate any proceeding otherwise permitted by Florida Law. This Agreement shall terminate upon the effective date of any Final Order issued in such a proceeding that changes PEF's base rates under this Section. This Section shall not be construed to bar or limit PEF from any recovery of costs otherwise contemplated by this Agreement.
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> ***
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> 14. Effective on the Implementation date, PEF will not have an authorized return on equity range for purposes of addressing earnings levels, and the revenue sharing mechanism described herein shall be the appropriate and exclusive mechanism to address earnings levels. However for purposes other than reporting or assessing earnings, such as cost recovery clauses and Allowance for Funds Used During Construction ("AFUDC"), PEF will use 11.75% as its authorized return.

In its order accepting and approving the Stipulation, the Commission unequivocally recognized that for the duration of the Stipulation:

> PEF will continue to operate without an authorized return on equity (ROE) ***range*** for the purpose of addressing earnings levels. The Stipulation's sharing mechanism will be ***the*** mechanism to address earnings levels.

Order at 3. [Emphasis added].

The language in the Stipulation and the Commission's expression of the basis of its understanding of the Stipulation in the Order could not be clearer. PEF has no authorized ROE range. There is no express or implied authorization for PEF to seek interim rates. The 10% figure in paragraph 7 serves only as a trigger, authorizing the Company to seek a change in its base rates when its achieved ROE falls below that level. [4]

As there is no specific mention of interim rates entitlement in the stipulation, the Commission must look to the interim statute for guidance. Section 366.071, Fla. Stat., would

[4] It follows that, inasmuch as there is no ROE floor for interim purposes, there is also no entitlement in the Stipulation that PEF should be allowed to earn at least 10% for 2009 as is suggested or claimed in the various PEF pleadings filed in these dockets. Any relief sought based upon this premise should be denied.

provide the basis for interim relief were any to be allowed. This is a specialized mechanism that allows the fairly expeditious, lawful collection of increased rates from customers without providing them an opportunity for a hearing. It is also a mechanism that the Commission has expressly held is only available for a full base rates proceeding. See, *In Re: Petition for authority to recover prudently incurred storm restoration costs related to 2004 storm season that exceed storm reserve balance, by Florida Power & Light Company (FPL Storm Case)*, Order No. PSC-05-0187-PCO-EI, Issued February 17, 2005 in Docket No. 041291-EI, Order at 10).[5]

The interim statute provides in relevant part:[6]

> (1) The commission may, during any proceeding for a change of rates, upon its own motion, or upon petition from any party, or by a tariff filing of a public utility, authorize the collection of interim rates until the effective date of the final order. Such interim rates may be based upon a test period different from the test period used in the request for permanent rate relief. ***To establish a prima facie entitlement for interim relief, the commission, the petitioning party, or the public utility shall demonstrate that the public utility is earning outside the range of reasonableness on rate of return calculated in accordance with subsection (5).***
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> ***
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> (5)(a) In setting interim rates or setting revenues subject to refund, the commission shall determine the revenue deficiency or excess by calculating the difference between the achieved rate of return of a public utility and its required rate of return applied to an average investment rate base or an end-of-period investment rate base.
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> (b) For purposes of this subsection:
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> 1. "Achieved rate of return" means the rate of return earned by the public utility for the most recent 12-month period. The achieved rate of return shall be calculated by applying appropriate adjustments consistent with those which were

[5] PEF's request for interim relief is made in a full base rate proceeding. The full base rate proceeding requested in Docket No 090079-EI is not authorized under the Stipulation nor filed pursuant to the 10% trigger. It is expressly filed to coincide with the expiration of the Stipulation on January 1, 2010. It cannot impact rates or billings before the last billing cycle in 2009. As a corollary, any interim request under it likewise cannot affect 2009 billings.

[6] PEF cites s. 366.071(2)(a), Fla. Stat., as authority. However that provision bears no relation to the calculation of the interim relief or the determination of entitlement. It is only cited by PEF for the mandatory timeframe for considering and authorizing interim relief.

used in the most recent individual rate proceeding of the public utility and annualizing any rate changes occurring during such period.

2. "Required rate of return" shall be calculated as the weighted average cost of capital for the most recent 12-month period, using the last authorized rate of return on equity of the public utility, the current embedded cost of fixed-rate capital, the actual cost of short-term debt, the actual cost of variable-cost debt, and the actual cost of other sources of capital which were used in the last individual rate proceeding of the public utility.

3. ***In a proceeding for an interim increase, the term "last authorized rate of return on equity" used in subparagraph 2. means the minimum of the range of the last authorized rate of return on equity established in the most recent individual rate proceeding of the public utility.*** In a proceeding for an interim decrease, the term "last authorized rate of return on equity" used in subparagraph 2. means the maximum of the range of the last authorized rate of return on equity established in the most recent individual rate proceeding of the public utility. ***The last authorized return on equity for purposes of this subsection shall be established only: in the most recent rate case of the utility; in a limited scope proceeding for the individual utility; or by voluntary stipulation of the utility approved by the commission.***

[Emphasis added.]

Nevertheless, without regard to this unambiguous language in the Stipulation and the statute, PEF claims that its interim relief calculation is based upon something it creatively refers to as "... the Company's last authorized minimum return on equity..." No amount of artful drafting can convert the language in paragraph 7 of the Stipulation into the statutorily required language: "minimum of the range of the last authorized rate of return." PEF cannot lawfully invoke the interim rates statute because PEF does not have an authorized rate of return. Any reinterpretation would fundamentally alter the basis under which intervenors were induced to sign the Stipulation. The words in the statute are a term of art. Intervenors were entitled to rely upon them. The commission must strongly reject this *post hoc* rewrite and protect the integrity of the settlement process.

The interim statute requires that the formula be followed exactly. The Commission's order recognizes that the Stipulation did not provide for an interim mechanism. Inasmuch as the agreement provided revenue sharing as the exclusive method for dealing with earnings, there was

no reason to have an ROE range. Interim relief as provided for in the statute is nothing if not a pure earnings test. The statutory formula only concerns the subject of "addressing earnings levels." Since revenue sharing precludes the utilization of an achieved rate of return comparison encompassed in the strict formula of Section 366.071, Fla. Stat., there is no basis for the interim relief found in the statute. There is no "make whole" concept allowable under a revenue sharing mechanism. For 2009, PEF has no authorized ROE. It has no authorized ROE range. It certainly does not have a so-called "last authorized minimum return on equity" – which itself is a statutory nullity.

It should be noted that the Company alleges as part of its interim request that it projects its achieved ROE will fall below 7% for 2009. This allegation is followed with this statement:

> Accordingly, PEF needs this interim relief, and PEF further needs the limited base rate relief requested in its limited proceeding petition, and the accounting and cost adjustments requested in its petition for approval of the deferral of pension expenses and the ability to charge storm hardening initiative expenses to the storm damage reserve, in order to move closer to the 10% floor set forth in the Stipulation and Settlement approved by the Commission.

Base Rate Petition at 4-5.

Intervenors strongly object to this aspect of the Petition. First, it seeks to introduce allegations into the consideration for interim relief which are not legally cognizable as discussed, *supra*. Second, and more of a concern, is to the extent that PEF seeks interim and limited consideration of earnings relating to 2009, it appears to violate paragraph 17 of the Stipulation which bars any party from seeking an outcome in conflict with the Stipulation.

The bottom line with respect to interim rate relief is that PEF has woven together a tenuous series of requests revolving around the incorrect notion that it has a 10% earnings ***floor*** for 2009. PEF has materially mischaracterized the 10% value – it is only a triggering mechanism relative to PEF's ability to ask for relief; it is not in any sense a floor or a minimum ROE to which PEF has any entitlement whatsoever. Once this fallacious premise is removed, the house of cards upon which it is built upon must fall. Any notion of entitlement to interim relief (and accounting deferrals and charge offs based on the 10% trigger as discussed below) should be

denied. Likewise, the tariffs filed seeking an interim rate increase of $13.1 million should also be denied.

(DOCKET NO. 090145-EI)
STORM HARDENING COSTS
AND PENSION COST DEFERRAL

In its ***Petition of Progress Energy Florida, Inc. For Expedited Approval of the Deferral of Pension Expenses, the Authorization to Charge Storm Hardening Expenses to the Storm Damage Reserve and the Variance or Waiver of Rule 25-6.0143(1)(c),(d), and (f), F.A.C.*** ("Pension/Storm Petition"), PEF seeks Commission approval for $85 million in accounting adjustments erroneously grounded on its flawed interpretation of the very Stipulation it signed. Intervenors further object to PEF's request for accounting treatment that would shift costs incurred in 2009 – and thus covered by the revenue sharing mechanism -- for consideration in ratemaking in 2010 or later periods. These requests violate the Stipulation in that the Company requests modification of the Stipulation by seeking accounting treatment that is contrary to the intent of the parties, the plain language of the Stipulation and the comprehensive, all-encompassing revenue sharing mechanism embodied in the parties' agreement set forth in the Stipulation.

The Stipulation is an agreement that substitutes a defined revenue sharing process for the traditional earnings based rates review. PEF made a bargain that yielded benefits, including expedited rate relief (Hines Units 1 & 2) and the opportunity to earn above 13% and share in revenue growth, without risk of regulatory intervention. These benefits are not insubstantial. Having made this bargain which renders their achieved ROE relevant only for the purpose of determining a trigger for limited proceeding relief, the Company cannot now come before the Commission and seek to selectively defer costs to future periods for recovery outside of the revenue sharing process. Such forward-shifting of costs would allow PEF to receive a benefit – at customers' expense -- it for which it did not bargain and to which customers did not consent. The pension and storm hardening expense impacts must be allowed to normally impact the years

in which those costs were incurred. Certainly the intervenors did not attempt to eviscerate the

Stipulation when PEF's achieved earnings were above 13% ROE for significant periods after the Stipulation became effective.

1. Deferral of pension expense

In its Pension/Storm Petition, PEF suggests that:

> The benefits of the pension income for 2008 have been recognized and passed on to customers in the calculation of revenue requirements to achieve the minimum 10 percent return on equity for 2008.

Pension/Storm Petition at 6.

Again, PEF is seeking relief based upon a faulty premise. The Intervenors reject the notion that the negative expense of $23 million has been credited to the benefit of customers. First, the Stipulation makes it clear that the revenue sharing mechanism is ***the*** exclusive means of addressing earnings through the end of 2009. Secondly, as discussed above, there is not an interim mechanism available for PEF in this matter. What is more, there is no right, obligation, opportunity, or other device available for PEF to have its achieved earnings be artificially pegged to at least 10% ROE for 2009. This ironclad aspect of the Stipulation is especially compelling where PEF seeks to carry forward "debits" for consideration and recovery into the post-January 1, 2010 earnings-based process that it expressly bargained away for the year 2009.

Earnings for 2009 should be what they are without any selective debit shifting. It goes without saying that the Intervenors would not have had a parallel remedy during the term of the Stipulation if PEF had been hypothetically earning 16% ROE and we sought to carry an excess earnings "credit" forward to 2010 to offset rate increases. A deal is a deal and PEF must live with the deal it made. The only relevance the achieved ROE can have relative to 2009 results is that it can trigger PEF's right to seek limited relief for an event such as addition of a generating asset like the Bartow Repowering Project.[7] PEF has invoked that right and having done so, has rendered the 10% ROE figure in paragraph 7 of the Stipulation moot and obsolete. It has no further meaning.

[7] As discussed infra, PEF has waited too long to seek expedited, "extra-hearing" rate relief for this matter.

Regarding the pension expenses specifically, the Commission adopted Statement of Financial Accounting Standard ("FAS") No. 87 - Employers' Accounting for Pension as the standard upon which these costs would be recognized by utilities for both accounting and ratemaking purposes. The Financial Accounting Standards Board's summary preceding the statement provides:

> A fundamental objective of this Statement is to recognize the compensation cost of an employee's pension benefits (including prior service cost) over that employee's approximate service period. Many respondents to *Preliminary Views* and the Exposure Draft on employers' accounting for pensions agreed with that objective, which conflicts with some aspects of past practice under APB Opinion No. 8, *Accounting for the Cost of Pension Plans*.
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> The Board believes that the understandability, comparability, and usefulness of pension information will be improved by narrowing the past range of methods for allocating or attributing the cost of an employee's pension to individual periods of service. The Board was unable to identify differences in circumstances that would make it appropriate for different employers to use fundamentally different accounting methods or for a single employer to use different methods for different plans.
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> The Board believes that the terms of the plan that define the benefits an employee will receive (the plan's benefit formula) provide the most relevant and reliable indication of how pension cost and pension obligations are incurred. In the absence of convincing evidence that the substance of an exchange is different from that indicated by the agreement between the parties, accounting has traditionally looked to the terms of the agreement between the parties, accounting has traditionally looked to the terms of the agreement as a basis for recording the exchange. Unlike some other methods previously used for pension accounting, the method required by this Statement focuses more directly on the plan's benefit formula as the basis for determining the benefit earned, and therefore the cost incurred, in each individual period.

(Emphasis added.) (Financial Accounting Standards Board's summary of Statement of Financial Accounting Standards No. 87).

In 1992, when the Commission adopted FAS 87 for pension accounting, it rejected other methods put forth by other parties, including the Office of Public Counsel, who recommended that the Commission adopt the "pay-as-you-go" method of accounting for pension costs. See, *In re: Petition for a rate increase by Florida Power Corporation*, Order No. PSC-92-1197-FOF-EI,

Issued, October 22, 1992 in Docket No. 910890-EI, at 10-11. This OPC-proposed method would have recognized in rates pension costs which were actually paid to the trustee regarding pension benefit programs. Order No. PSC-92-1197-FOF-EI at 10. When the Commission adopted FAS 87 for PEF over the Intervenors' objection it did so by noting and agreeing:

> The company argued that accrual accounting more closely matches the cost of the benefit with the period in which the service is provided.

Id.

In adopting FAS 87, the Commission appears to have relied upon the FASB statement that the accounting standard was based on a fundamental objective of recognizing pension costs over the employee's approximate service period. The Commission also appears to have relied upon the statement that the Board was unable to identify differences in circumstances that would make it appropriate for different employers to use fundamentally different account methods in recognizing pension costs. Since 1992, the Commission has recognized in rates the actuarially determined pension expense which would be recognized in the test year. This recognized pension expense was not the actual payment made by the Company to the trustee for pension costs.

In many instances the company paid significantly less or made no contribution to the pension plan trustee. This would be so even though the ratepayer was paying for those costs in rates based upon a higher calculated level of expense. Usually the company opts to make the minimally required, tax deductible pension plan contribution. This means that any revenues collected through rates set to cover pension expense and which exceed the contribution made by the company are additional cash flow from which the company benefits.

As discussed *supra,* the Company entered into a Stipulation with the Office of the Public Counsel and other parties. The Stipulation implemented a revenue sharing mechanism as the exclusive earnings mechanism for the five-years ending December 31, 2009. PEF's proposed pension cost shift violates the Stipulation and the Commission's ratemaking principles and settled case law.

PEF's petition requests that the Commission take the 2008 negative pension expense of $23,343,000 and add that to the projected 2009 positive pension expense of $33,873,480 to arrive at a total pension increase of $57,216,480, (jurisdictionally $52,476,667). PEF is requesting that the Commission defer these expenses incurred in 2008 and 2009 for consideration in a 2010 test year and/or later period. Specifically, PEF states that:

> PEF further requests that it be allowed to continue deferral until such time as the recovery of these additional costs is provided for in Commission approved base rates.

Pension/Storm Petition at 6.

Fundamentally, this request violates the principle of retroactive ratemaking. That is, the actual $23.3 million of negative pension expense in 2008 would be added to a positive pension expense projected for 2009 of $33.9 million in order to increase pension expense in 2010. This clearly violates the ratemaking principle of attempting to recover past expenses or revenues in future rates. This is a violation of Commission ratemaking principles. See, *In Re: United Water Florida, Inc.*, Order No. PSC-98-1243-FOF-WS, Issued in Docket No. 971596-WS. (Attempted deferral to future period of post retirement benefits costs that were unrecovered due to insufficient earnings denied as violative of prohibition against retroactive ratemaking; retroactive ratemaking occurs when attempt is made to recover past losses in prospective rates), citing *City of Miami v. Florida Public Service Commission*, 208 So.2d 249,259 (Fla. 1968). Additionally, the Florida Supreme court has consistently ruled that such actions are unlawful inasmuch as they attempt to recover past costs in future rates. *City of Miami; Gulf Power Co. v. Cresse*, 410 So.2d 492, (FLA. 1982); *Meadowbrook Utility Systems, Inc. v. Florida Public Service Commission*, 518 So.2d, 326 (Fla. 1987); *Citizens of the State of Florida v. Florida Public Service Commission*, 448 So.2d 1024 (Fla. 1982)

As pointed out in the relevant passages of FAS 87, the fundamental objective of this statement is to recognize employees' pension benefits over the employees' approximate service period. By allowing PEF to take negative pension benefits in 2008, add them to projected

pension costs in 2009, and then defer these costs into a future period, the Commission would not be recognizing employee benefit costs in the appropriate service period. It would be allowing selective deferral of costs for the benefit of the Company's stockholders to reflect higher costs in future rates and clearly would be a violation of FAS 87.

The recent unexpected financial crisis in the markets, and the resulting economic downturn cited by the Company have affected regulated and unregulated companies' defined benefit plans also. These other regulated and unregulated companies will be required to comply with FAS 87 and recognize the expense in 2009. This proposed deferral option is not available to unregulated companies. To adopt PEF's proposal would, in effect, selectively and situationally abandon the Commission's prior decision to adopt the decision of the FASB which has stated in adopting this Standard:

> The Board was unable to identify differences in circumstances that would make it appropriate for different employees to us fundamentally different accounting methods or for a single employer to use different methods for different plans.

See Financial Accounting Standards Board's summary of Statement of Financial Accounting Standards No. 87.

PEF is asking the Commission to adopt a different method than FAS 87 solely to benefit PEF's stockholders. If the Commission were to selectively allow this special deferral for PEF shareholders, then the entire underlying principle of how pension costs should be recognized for ratemaking purposes would be abandoned.

PEF attaches an order of the South Carolina commission granting similar pension expense deferral. Perhaps this is an effort to provide persuasive authority or some sort of precedent or justification. The Intervenors urge the commission to ignore this order. No context for that order is provided. It would certainly be PEF's burden and obligation to provide the context. No mention is made as to whether it was rendered in the face of a stipulation similar to the PEF Stipulation.

Importantly, the South Carolina decision contains a finding that pension income in the

past "has reduced electric rates." If this is true, it is a crucial difference. In the pending matter, as discussed, *supra,* it is clear that PEF's earnings are not relevant for 2009. Under the Stipulation, PEF's rates have not been – nor could they have been – reduced to account for any pension income. In contrast, the South Carolina Commission indicates that a change in pension expense could cause that Commission to be "considering an increase in electric rates." Under the Stipulation's revenue sharing mechanism, this is not an option for Progress Energy in Florida. The South Carolina order has no probative or precedential value and is inapposite to PEF's circumstances in Florida. It should be ignored.

When the Public Counsel and other parties entered into the Stipulation in 2005 they reasonably relied on the principle that rates would be frozen for the period covered by the Stipulation. PEF's proposal would violate the Stipulation by taking certain costs which pertain to the period under which rates were frozen (and for which all parties rightfully assumed that cost recovery would come from the revenues that were shared) and then moving those costs out of that period into a future period. .

If the Commission were to allow PEF to violate the Stipulation by allowing these costs to be moved out of the stipulated period into a future rate period, then the sanctity of any future Stipulation would be brought into doubt. In essence PEF's proposal amounts to a form of double recovery since the expenses incurred during the operational timeframe of the revenue sharing mechanism are presumed to be recovered under that plan. Allowing them to be deferred and recovered in rates set for 2010 forward would allow PEF to effectively recover them again. In any event, such treatment constitutes an impermissible modification of the Stipulation and should be rejected.

1. Accounting for 2009 projected storm hardening costs

PEF's proposal to charge storm hardening (actually just tree-trimming and pole inspection) costs to the storm reserves is a violation of the Stipulation, the Commission's rule on the matter, the Uniform System of Accounts, past Commission decisions and common sense.

Storm reserve dollars are accumulated in Account 228.1. The definition of Account 228.1 in the Uniform System of Accounts is as follows:

228.1 Accumulated provision for property insurance.

A. This account shall include amounts reserved by the utility for losses through accident, fire, flood, or other hazards to its own property or property leased from others, not covered by insurance. The amounts charged to account 924, Property Insurance, or other appropriate accounts to cover such risks shall be credited to this account. A schedule of risks covered shall be maintained, giving a description of the property involved, the character of the risks covered and the rates used.

B. Charges shall be made to this account for losses covered, not to exceed the account balance. Details of these charges shall be maintained according to the year the casualty occurred which gave rise to the loss.

As the account definition states "This account shall include amounts reserved by the utility for losses through accident, fire, flood, or other hazards to its own property or property leased by others, not covered by insurance." Tree trimming and pole inspection expenses do not fit into this definition as such expenses are simply not losses and are therefore ineligible to be charged against the storm reserve. That is why the Company is asking that the Commission waive the rules regarding this account. Tree trimming and pole inspection costs are not related to any accident, fire, flood or other hazards such as, hurricanes. Storm hardening costs like those for tree trimming and pole inspection are somewhat, but not exclusively related to making the property resistant to hurricane damage which of course has always been a stated priority of the Company when the property was originally installed. If the Commission were to allow a company to charge these costs to the reserve for storm damage it would be violating the Uniform System of Accounts and violating the principle under which these costs are collected from ratepayers.

The Company states "The Storm Damage Reserve is a utility resource that supports the funding of immediate restoration activity following severe weather events without undermining the financial integrity of the utility." However, the Company's recommendation, in addition to

depleting the storm damage reserve and possibly increasing revenue requirements in the base rates case, would effectively reverse that reserve and, in effect, pass on 2009 capital investment costs – not storm restoration costs and losses to ratepayers by reducing the Storm Damage Reserve which is credited against rate base for PEF which does not have a funded reserve. This again is an attempt by the Company to engage in retroactive ratemaking, by reducing the storm reserve and passing the carrying costs and potentially other replenishment cost onto ratepayers in the future test year of 2010.

Past Commission practice has been to allow only after-the-fact costs actually incurred in true storm restoration activities to be charged to the Storm Damage Reserve -- and then only primarily related primarily related to damage caused by named hurricanes and tropical storms. Other minor damage caused by high winds or rain storms typically have been considered maintenance costs and the Company is required to charge those costs to maintenance as a current operating expense. The Commission Staff is charged with the responsibility of insuring that costs charged to the storm reserve meet Commission policy and the standards in Rule 25-6.0143, F.A.C ("Storm Reserve Rule" or "Rule"). Without exception, only costs which resulted from storm damage from a significant storm were allowed to be charged to the reserve. This has been an inviolate policy and one that respects the reason (availability of adequate resources for storm recovery and restoral) for which the reserve was established at ratepayer expense in the first place.

Under the Company's retroactive ratemaking proposal the Commission is being asked to now allow normal operating and maintenance costs like tree trimming expense to be charged against the reserve. This is a violation of the Rule and a violation of the fundamental basis for why these costs are being collected from ratepayers at all. Although the Company considers these reserves as a utility resource they are, in effect, insurance reserves paid by ratepayers to insure against future storm damage. They are not a "utility resource" available for use by the utility to circumvent the test year cost principles or the Stipulation.

The Company's petition spends several pages trying to explain away why this proposal is not a violation of the purpose and intent of a Storm Damage Reserve. These explanations defy logic

and common sense. Clearly by taking certain operating and maintenance expenses which are projected to be incurred in 2009 and charging them against the storm reserve which will be used as a reduction of the rate base in 2010, the immediate effect will be to cause ratepayers to pay a carrying charge on costs incurred which are normal operating and maintenance expense for the year 2009. The proposed accounting will in turn increase net income to shareholders by reducing 2009 maintenance expense. This highly questionable negative ratepayer impact in the Company's proposal is further exacerbated by the Company's filing in Docket 090079-EI that reflects a 57% increase in overhead line maintenance between 2008 and 2010. (See Schedule C-6, page 6 of 7).

Intervenors reject the notion that a waiver should be granted from the provisions of the Rule. PEF has failed to meet the statutory standards required for a rule waiver. Section 120.542(2), Florida Statutes, requires a demonstration that "the purpose of the underlying statute will be or has been achieved by other means by the person" and "when application of the rule would create a substantial hardship or violate principles of fairness." Contrary to the weak assertions that the purposes of the Storm Damage Rule are met by charging storm hardening costs to the reserve, the Company's claim reinforces the notion against the slippery slope of *ex post facto* accounting creativity having any place in violating the sacrosanct principles that led to the creation of a reserve that will be available for actual storm restoration.

In fact, Intervenors submit that the waiver cannot be granted because PEF can never demonstrate that the purposes of the Rule would be met by charging tree trimming and pole inspection costs against the reserve. This is so because it is inconceivable that the reserve or any cost recovery mechanism to replenish the reserve would ever have been created if allowable expenses were not strictly limited to storm recovery and service restoration. As evidenced by past filings before the Commission, PEF appears to agree with this notion.

In 2004, immediately after that year's devastating storm season, the Company filed for approval to recover, via a clause-type surcharge, about $251 million (of a total of $311 million) in storm restoration costs in excess of its then reserve balance of $46.9 million. In its petition, filed on November 2, 2004 in Docket No. 041272-EI, PEF made several representations in their

successful effort to collect over $251 million from its customers, regarding the types of expenses that would be recoverable and the purposes for which they were being recovered. Twelve excerpts are reproduced below (page citations in [ ]):

1. The clause should provide for the recovery of the Company's storm-related Operation and Maintenance (O&M) costs...[p. 1]

2. A Storm Cost recovery Clause will serve the public interest. It will end the regulatory uncertainty concerning recovery mechanisms that currently exist for costs incurred due to the infrequent, catastrophic hurricane or major storm. [p.2]

3. PEF can fulfill its statutory obligation to serve by safely and expeditiously restoring power for its customers with the understanding that PEF will be timely reimbursed, just as PEF was before with insurance coverage, for its reasonable and prudently incurred costs to prepare for, and respond to, and recover from catastrophic storms. Customers certainly benefit from the continued assurance that their electric service will promptly and safely be restored following such major storms.[8] [p.2]

4. The storm reserve accrual was originally set at $3 million annually based on a statistical study that examined probable storm occurrence, probable storm intensity, and probable level of storm damage.[9] [p. 5]

5. PEF's storm response efforts, and storm-related costs, commence well before the impact of hurricanes or storms are experienced in PEF's service territory. The goal of storm preparation efforts is to minimize the time needed to restore service following a storm. Storm response readiness is an around the clock effort that typically begins 96-72 hours before a storm is expected to have an impact on the Company's service territory.[10] [p.6]

6. These storm preparation and management efforts are crucial to mitigating the duration of service outages, providing updates on restoration times, and accomplishing restoration as cost-effectively as exigent circumstances permit. [p.7]

7. These steps ***will insure*** that the Company obtains dollar-for-dollar recovery of its actual storm-related costs and ***that customers pay no more than reasonable and prudently incurred storm–related costs***. [Emphasis added] [p.17]

8. Implementation of the Storm Cost Recovery Clause will allow the Company's extraordinary storm costs after hurricanes to be allocated directly and proportionately to the Company's customers who benefited from the company's efforts to restore and

[8] Noteworthy here is that no insurance policy would ever cover tree trimming and pole inspection costs. Since the storm reserve and cost recovery mechanisms replace the insurance coverage that is no longer available, this is a significant fact.

[9] Nothing indicated that the statistical study looked at including tree trimming and pole inspection expenses.

[10] These are the type of contemporaneous preparation efforts that these recovery mechanisms were originally justified based upon – not the tree trimming and pole inspection costs at issue here.

otherwise maintain electric service during and immediately after the storms. [11][p.17]

9. In approving these self insurance programs, the Commission required utilities to accrue storm damage expenses as part of rates for a reserve fund ***to offset future storm damage*** costs. [Emphasis added] [p. 18]

10. Indeed, the Commission contemplated "special assessments" for customers to completely replenish the utility's storm reserve 'in the case of a major storm." [p. 19]

11. Only the reasonable and prudent storm-related O&M costs and the costs in excess of typical charges under normal operating conditions for capital expenditures ***necessitated by the storms*** are included in the Storm Cost Recovery Clause. [Emphasis added] [p.20]

12. Under such authority, the Commission may implement a Storm Cost recovery Clause that allows PEF to "distribute" to customers costs of installing and repairing necessary facilities in ***an emergency response to restore and maintain*** reliability of the power grid ***during and following*** the devastating onslaught of Hurricanes Charley, Frances, Ivan, and Jeanne. [Emphasis added] [p. 21]

The upshot is that in seeking authorization to collect funds from the customers, PEF represented that the funds would be strictly utilized for contemporaneous restoration and repair activities. However, PEF's current request in the Pension/Storm Petition to charge non-storm related costs against the reserve directly contradicts these representations.

Another way to look at the request is that under PEF's logic, even the costs of engineering and constructing nuclear facilities to withstand Category 5 hurricane force winds could be charged against the Storm Damage Reserve if a situational earnings need arose. Though ludicrous on its face, this example is no more absurd than what is being proposed here. Apart from being yet another example of seeking to evade the clear intent and language of the Stipulation, this proposal to raid the storm reserve would be a dangerous and destructive encroachment on the availability of a ready reserve that PEF's customers have provided for that storm ***recovery*** purpose – not for reimbursement of ongoing O&M expenses like tree trimming and pole inspection expenses.

Intervenors also point out that because PEF has gone to such lengths to rearrange the expenses in

[11] Note that the justification for collecting the money that is in the reserve is for contemporaneous storm recovery costs only.

2009 to achieve a mythical 10% ROE, they have created hardships, uncertainties and confusion in the rate case. Because they have asked for a waiver of the Rule, the statutory notice and hearing procedures of Section 120.542 are triggered. PEF seeks the ability to charge a staggering amount of O&M expenses to the reserve with no discussion of how the waiver request will interact with the rate case timeline or what impact granting the waiver would have on the revenue requirements or its impact on Staff or Intervenor resources.

The primary argument for the waiver is grounded again in the notion that PEF has a right under the Stipulation to earn at least 10% ROE. This is wrong in and of itself. Nevertheless, there is a not so subtle implication that the Company wants to be relieved from the deal it made in entering into the Stipulation. Paragraphs 25-26 of the Pension/Storm Petition are little more than a complaint that PEF cannot live up to the deal it made in that it suggests that the frozen rates are making it hard to cover these types of costs. This is an affront to the parties who have lived up to the Stipulation by not themselves fashioning creative pleadings requesting interim and/or permanent relief when PEF's achieved ROE was above 13% through the filing of complaints based upon our own contrived notions of an ROE ceiling. The Commission should dismiss any claims for relief or waiver and PEF's proposal should be denied.

(DOCKET NO. 090144-EI)
LIMITED PROCEEDING RELATED TO
BARTOW REPOWERING PROJECT

PEF has also filed its ***Petition of Progress Energy Florida, Inc. for a limited proceeding to include the Bartow Repowering project in base rates***. PEF grounds its request in three basic areas. First, understandably is the fact of the Bartow repowering project coming on line. Intervenors do not dispute that Progress has incurred costs for the Bartow project or that, in a base rate proceeding, there will be some level of base rate revenue requirement associated with the project. The facts surrounding this revenue requirement are however a matter of proof requiring an evidentiary hearing. The facts surrounding this revenue requirement are however a matter of proof requiring an evidentiary hearing. Second, PEF has asserted a need for speedy resolution due to "the current recessionary economic conditions" which it claims is "fairly indisputable." Conveniently these "indisputable" facts upon which they base their request are

not pled, nor are they contained in the testimony of their witnesses. Third, the Company asserts a right to have this limited proceeding heard as a result of the 10% "trigger" contained in the paragraph 7 of the Stipulation.

Curiously PEF has assumed that the Commission will process this case as a Proposed Agency Action (PAA). The Company has sought to have the PAA order issued on an expedited basis without affording an opportunity for a hearing and to have rates placed into effect subject to corporate undertaking. Intervenors find this problematic.

Obviously, the stipulation recognized that major costs such as the Bartow Repowering Project could negatively impact PEF's earnings and provided a triggering mechanism to bring such assets into base rate recovery. That is not in dispute. It is the alleged entitlement to interim relief while the Bartow rate relief request is pending that is in dispute.

The Intervenors' concern centers on whether PEF can reach immediately into the customers' pockets by attempting to bootstrap interim relief in a manner never contemplated by the Stipulation. This particular aspect of PEF's case is one that is neither exigent nor separable from the base rate petition found in Docket No. 090079-EI. PEF could have filed this case in 2008, sought and likely received expedited treatment and an evidentiary hearing as contemplated under paragraph 10 of the stipulation and Section 366.076, Fla. Stat. The Company's August 2008 surveillance report was filed on or about October 15, 2008 and showed a 9.69% achieved ROE. On or about December 15, 2008 PEF filed its October 2008 surveillance report and reported an achieved ROE of 9.4%.

In this time frame PEF was aware that the project was nearing operational status and that the in-service date was sufficiently known and measurable such that it was ripe for at least seeking rate relief for the new generating asset. As PEF stated on page 2 of the testimony of Kevin Murray filed in support of the Petition,

> All four combustion turbines were first test fired in November and December 2008 and we expect the plant to commence operation by its scheduled June 1, 2009 in-service date.

This fact scenario is at odds with PEF's request that this asset go into rate base and rates be raised in the middle of a major rate case with no hearing on the inclusion of $800 million in rate base. Clearly this "drive-by" rate increase scenario was not contemplated by the binding Stipulation. Instead the Stipulation acknowledges that the parties to the Stipulation would have a right to participate in the proceeding held on the limited proceeding request.

PEF's approach of portraying a scenario of dire financial need coupled with the "current recessionary economic conditions" and seeking a PAA-based determination and expedited treatment along with interim "make whole" relief combined with this brinksmanship is a serious concern to Intervenors. We believe that is contrary to the Stipulation. Regardless of the intent, the effect of these March 20th PEF filings (other than the permanent increase request) materially undermines the Stipulation and should be rejected.

It is worth noting that in a 1994 Tampa Electric Company case, the shoe was on the other foot. In a fairly mirror-image scenario, the Office of Public Counsel sought to have the Commission hold an expedited, limited proceeding to reduce Tampa Electric's rates due to a precipitous drop in the cost of common equity. The OPC further sought interim relief by asking the Commission set revenues associated with the reduction in ROE costs held subject to refund pending the outcome of the proceeding. The Commission declined to hold the limited proceeding or grant the interim relief, stating:

> While we could use this type of proceeding to adjust rates, it would be virtually impossible to do so on an expedited basis (as requested by OPC) and still comply with the notice requirements of chapter 366, Florida Statutes, by providing a reasonable opportunity to present testimony, conduct discovery, and obtain ratepayer input.

See, *In Re: Investigation into Currently Authorized Return on Equity of Tampa Electric Company*, Order No. PSC-94-0794-FOF-EI, Issued June 27, 1994 in Docket No. 930987-EI; order at 3.

Intervenors assert that the same concerns that the Commission relied upon to the benefit of Tampa Electric in 1994, when the Commission denied the relief requested by the Citizens on behalf of customers, must apply with equal or greater force here to the benefit of customers

where the utility (PEF) is seeking expedited relief that would not afford the Intervenors a reasonable opportunity for the hearing to which they are entitled. This is especially important today, where ratepayers in the worst economic times in a half a century are being forced to make choices between mortgage payments, medical treatment, food and increasing energy bills. With pending annual rate increases of more than $1.5 billion between PEF and FPL and a scant six months to prepare, the resources of the customers' legal representatives are fully taxed without having a rate increase request of $126 million annually squeezed into the procedural schedule. All of the due process requisites that were a concern in the *Tampa Electric* case exist here.[12]

Furthermore, Intervenors have a concern that the practical effect of PEF's filings – on the whole – is that they have taken the elements of a rate case and segregated them in a way that have the potential to clog the FPSC docket, drain the resources of all the parties and the commission and hamper intervenors' participation in these cases. More importantly these piecemeal requests have the distinct likelihood of contributing to conflicting and confusing signals to consumers about their electricity consumption and the cause(s) for rate increases.

The bottom line is that PEF settled its last base rate filing on its own accord. It bargained for and received a revenue sharing mechanism that was not tied to earnings. That bargain expires at the end of 2009. There was no interim relief, no earnings level changes for the covered years, no base rate changes other than made after hearing and initiated after the 10% trigger occurred as contemplated in the Stipulation.

With regard to the Bartow Repowering Project, PEF has created the dilemma in which it finds itself. It is not the customers' fault that PEF has waited many months before seeking an evidentiary hearing on Bartow. PEF, PSC Staff and the parties have acknowledged the fact that it was well known that at least two major rate cases would be held in the latter three-fourths of

[12] Intervenors acknowledge that the *FPL Storm Case*, cited *supra*, reached a different result on the availability of expedited interim relief. However that case is readily distinguishable. There FPL moved expeditiously and (even before the 2004 storm season had concluded) petitioned for storm reserve replenishment on an interim and expedited basis pursuant to the "file and suspend" provisions of s. 366.06(3), Fla. Stat. Here, PEF let its rights languish and has undermined its claim for the expedited treatment it seeks at this late juncture. Notable also is that PEF is not seeking relief under the file and suspend provisions as did FPL.

2009 by both FPL and PEF. Nor was it unknown that both PEF and FPL would be seeking additional recovery of nuclear construction costs.

It is wholly impractical – and violative of the intervening parties due process rights -- at this late date to have the evidentiary hearing on a $126 million rate case in the middle of a $500 million rate case when parties are focused on significant discovery analysis and testimony preparation and when they will have had insufficient time to conduct discovery on the Bartow request. This would turn the traditional notions of fairness and due process upside down. Inasmuch as interim relief is not legally available to PEF and inasmuch as only PEF is to blame for the timing, the Commission should consider the Bartow Repowering Project in the rate case where it can receive an evidentiary hearing before ***any*** rates are changed as a result thereof.

In summary, Intervenors object to PEF's request that any interim rate increase -- grounded in a supposed 10% ROE floor -- for the Bartow Repowering Project should be authorized as a result of the limited proceeding. Such relief is barred by the Commission's Order approving the Stipulation. Because it would materially interfere with the parties' preparation for the rate case and cause substantial hardship and prejudice, we also object to the Commission setting this matter for an evidentiary hearing or authorizing interim rate relief before the conclusion of the hearing to be conducted in Docket No. 090079-EI. While we do not object to PEF's right to request a hearing, at this late juncture such a hearing cannot -- --be held in a way that would not deny Intervenors' and other potential parties' procedural and substantive due process.

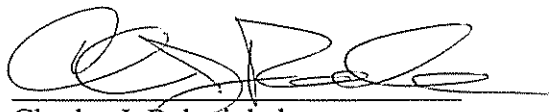
For the reasons stated above, the Intervenors urge that the Commission deny each measure of relief requested by PEF in the above styled matters. Furthermore, the Intervenors request that the Commission suspend or deny each tariff filed by PEF in any of the above-styled

Dockets without granting or allowing any increase in rates before evidentiary hearings are held pursuant to section 120.57, Fla. Stat.

Dated this 3rd day of April, 2009.

Respectfully submitted,

J.R. KELLY, PUBLIC COUNSEL



Charles J. Rehwinkel
Associate Public Counsel
Florida Bar No. 0527599

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REHWINKEL.CHARLES

From: Mary Anne Helton [MHelton@PSC.STATE.FL.US]
Sent: Tuesday, March 03, 2009 3:08 PM
To: Mary Anne Helton; Bryan Anderson; REHWINKEL.CHARLES; Dianne Triplett; J. Michael Walls ; KELLY.JR; James Brew; John McWhirter; John T. Burnett; McGLOTHLIN.JOSEPH; Michael B. Twomey ; Natalie Futch Smith; Paul Lewis; Wade_Litchfield; john_butler@fpl.com; Schef Wright ; cecilia.bradley@myfloridalegal.com; mbraswell@sugarmansusskind.com; sugarman@sugarmansusskind.com; saporito3@gmail.com; BECK.CHARLES
Cc: Mary Bane; Booter Imhof; Tim Devlin; Jennifer Brubaker; Katherine Fleming; Lisa Bennett; Keino Young
Subject: Rate Case Hearing Dates

Dear All:

Thank you again for meeting on short notice on Thursday afternoon to discuss the proposed revisions to the Commission's calendar. After our meeting, staff again reviewed the calendar taking into consideration the comments and concerns that were raised during our discussion. Based on our review and multiple internal meetings to assess possible changes, the dates for the prehearings and hearings remain as presented on the revised schedule discussed during the Thursday afternoon meeting.

Conservation Goals (080407-EG, et al.)
8/3 prehearing conference
8/10-14 hearing

FPL rate case (080677-EI)
8/17 prehearing conference
8/24-28; 8/31; 9/2-4 hearing

Nuclear Cost Recovery (090009-EI)
8/20 prehearing conference
9/8-11 hearing

Progress rate case (090079-EI)
9/14 prehearing conference
9/21-25; 9/28-10/2 hearing

These dates are contingent upon FPL filing its MFRs by March 18, 2009, and Progress filing its MFRs by March 20, 2009. It is staff's intention that intevenors will be afforded at least 120 days for filing testimony in both rate cases. These prehearing and hearing dates will remain "shadow dates" on the Commission's calendar until the companies file MFRs and an Order Establishing Procedure is issued by the Prehearing Officer.

As always, please let me know if you have any questions or concerns.

Sincerely,
Mary Anne Helton

Mary Anne Helton
Deputy General Counsel
Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, FL 32399-0862
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From: Mary Anne Helton
Sent: Thursday, February 26, 2009 2:24 PM
To: Mary Anne Helton; 'Bryan Anderson'; Charles Rehwinkel; 'Dianne Triplett'; 'J. Michael Walls '; 'J. R. Kelly '; 'James Brew'; 'John McWhirter'; 'John T. Burnett'; 'Joseph Mcglothlin, Esq.'; 'Michael B. Twomey '; 'Natalie Futch Smith'; 'Paul Lewis'; 'Wade_Litchfield'; 'john_butler@fpl.com'; 'Schef Wright '; 'cecilia.bradley@myfloridalegal.com'; 'mbraswell@sugarmansusskind.com'; 'sugarman@sugarmansusskind.com'; 'saporito3@gmail.com'; Charles Beck
Cc: Mary Bane; Booter Imhof; Tim Devlin; Jennifer Brubaker; Katherine Fleming; Lisa Bennett; Keino Young
Subject: RE: Rate Case Scheduling Meeting - TODAY at 3:00 p.m.

Dear All:

Please find attached two tables. The first table sets out the proposed schedule for the tentative hearing dates that are **currently** on the Commission's calendar. The second table sets out the **revised** proposed schedule for hearing dates that give the intervenors significantly more time to prefile testimony in the FPL and PEF rate cases as well as the nuclear cost recovery docket.

I have also included the hearing schedules for the DSM goals dockets and the fuel docket solely for comparison purposes. The only way we could make the revised schedule work was to move the DSM hearing back a couple of weeks. The dates for filing direct and intervenor testimony in the DSM dockets have not changed. The fuel docket dates have also not changed.

In addition, I have attached the schedule for service hearings for the rate case. The locations are based upon previous rate case filings for the companies.

Finally, thanks to all of you who are able to participate today.

Mary Anne Helton

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From: Mary Anne Helton
Sent: Thursday, February 26, 2009 10:42 AM
To: Bryan Anderson; Charles Rehwinkel; Dianne Triplett; J. Michael Walls ; J. R. Kelly ; James Brew; John McWhirter; John T. Burnett; Joseph Mcglothlin, Esq.; Michael B. Twomey ; Natalie Futch Smith; Paul Lewis; Wade_Litchfield; 'john_butler@fpl.com'; 'Schef Wright '; 'cecilia.bradley@myfloridalegal.com'; 'mbrasswell@sugarmansusskind.com'; 'sugarman@sugarmansusskind.com'; 'saporito3@gmail.com'
Cc: Mary Bane; Booter Imhof; Tim Devlin; Jennifer Brubaker; Katherine Fleming; Lisa Bennett; Keino Young
Subject: Rate Case Scheduling Meeting - TODAY at 3:00 p.m.
Importance: High

Dear All:

As you know, the rate case settlements for Florida Power and Light and Progress Energy expire at the end of this year. Both utilities have provided the Commission with notification letters concerning their test years.

Proposed hearing dates have been tentatively set, but some parties have expressed concern that more time is needed to file intervenor testimony than the current dates allow.

Because the Commission's calendar is extremely full for late Summer and the Fall, we must act very quickly to firm up hearing dates scheduled during this time frame.

In addition, recognizing that some of you may have concerns that you would like to voice, we have scheduled a meeting for this afternoon, Thursday, February 26, at 3:00 p.m., in the Internal Affairs Room in the Easley Building. If you cannot attend this meeting in person, you may call in at 1-888-808-6959 and dial conference code 4136208.

Staff is in the process of fine tuning hearing schedules for the current hearing schedule as well as a revised hearing schedule. For those of you who cannot attend in person, we will e-mail you these schedules later today so that you will have them in front of you during the discussion.

I have attempted to include all those who have petitioned to intervene in the rate cases (Docket Nos. 080677-EI and 090079-EI) and nuclear cost recovery (090009-EI) dockets. I apologize in advance if I missed anyone.

Please let me know if you have any questions or concerns.

Sincerely,

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Cc: Mary Bane; Booter Imhof; Tim Devlin; Jennifer Brubaker; Katherine Fleming; Lisa Bennett; Keino Young
Subject: RE: Rate Case Scheduling Meeting - TODAY at 3:00 p.m.
Attachments: Table1.mah.doc; table2.mah.doc; servicehearings.mah.doc

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	DSM Goals	FPL rate case	Nuclear	PEF rate case	Fuel+
MFRs		3/18		3/20	
Direct	6/15	3/18	3/2 (true-up) 5/1 (projection+)	3/20	3/9 (true-up) 4/3 (GPIF; hedging) 8/4 (current yr; hedging) 8/14 (hedging reports) 9/1 (projection)
Audit Report	n/a	6/3	7/1	7/13	Fuel – 5/15 Env. – 6/12 Cons. – 6/15 PGA – 6/26
Intervenor	7/15	6/10 (84 days)	7/8 (128 days from true-up)	7/20 (122 days)	9/21
Staff	7/31	6/19	7/20	8/3	9/28
Rebuttal	8/10	7/6	8/3	8/17	10/5
Prhrg St	8/10	7/6	8/10	8/17	10/6
PH Conf	8/17	7/13	8/20	8/31	10/20
Hearing	8/24-28	8/4-14	8/31; 9/2-4	9/14-18 9/21-25	11/2-11/4
Briefs	9/10	8/28	9/9	10/12	11/23
Rec	10/15	10/19	9/24	11/10	12/3
Agenda	10/27	10/28 (special ag – rev req)	10/6	11/19 (special ag – rev req)	12/15
Rec (if req)		11/6		11/25	
Agenda (if req)		11/13 (special ag - rates)		12/1 (reg ag - rates)	

ORIGINAL PROPOSED

Labor Day 9/7; Veteran's Day 11/11; NARUC 11/16-18; Thanksgiving 11/26-27

	DSM Goals	FPL rate case	Nuclear (would require rule waiver)	PEF rate case	Fuel+
MFRs		3/18		3/20	
Direct	6/15	3/18	3/2 (true-up) 5/1 (projection+)	3/20	3/9 (true-up) 4/3 (GPIF; hedging) 8/4 (current yr; hedging) 8/14 (hedging reports) 9/1 (projection)
Audit Report	n/a	7/13	7/1	8/3	Fuel – 5/15 Env. – 6/12 Cons. – 6/15 PGA – 6/26
Intervenor	7/15	7/20 (124 days)	7/15 (135 days from true-up)	8/10 (143 days)	9/21
Staff	7/24	7/27	7/27	8/24	9/28
Rebuttal	8/3	8/3	8/10	8/31	10/5
Prhrg St	7/31	8/3	8/10	8/31	10/6
PH Conf	8/3	8/17	8/20	9/14	10/20
Hearing	8/10-14	8/24-28; 8/31; 9/2-4	9/8-11	9/21-25 9/28-10/2	11/2-11/4
Briefs	8/28	9/18	9/18	10/16	11/23
Rec	12/3	10/19	10/7	11/10	12/3
Agenda	12/15 (last possible ag date)	10/28 (special ag – rev req)	10/16 (special ag)	11/19 (special ag – rev req)	12/15
Rec (if req)		11/6		11/25	
Agenda (if req)		11/13 (special ag - rates)		12/1 (reg ag - rates)	

REVISED PROPOSED

Labor Day 9/7; Veteran's Day 11/11; NARUC 11/16-18; Thanksgiving 11/26-27

FPL Rate Case (to be filed in March 2009)
Service hearings:

6/19/09	11:00 am	Sarasota
6/19/09	6:00 pm	Ft. Myers
6/23/09	4:00 pm	Daytona
6/24/09	9:00 am	Brevard
6/24/09	4:00 pm	W. Palm Beach
6/25/09	9:00 am	Ft. Lauderdale
6/25/09	4:00 am	Miami

PEF Rate Case (to be filed in March 2009)
Service hearings:

7/15/09	11:00 am	Ocala
7/16/09	9:00 am	St. Petersburg
7/16/09	6:00 pm	Clearwater
9/14/09	9:30 am	Tallahassee

DOCKETS NO. 090079-EI; 090144-EI & 090145-EI
CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing *CONSOLIDATED RESPONSE TO Progress Energy Florida's REQUEST FOR INTERIM RELIEF; PETITION RELATED TO ACCOUNTING TREATMENT FOR PENSION AND STORM HARDENING EXPENSES AND PETITION LIMITED PROCEEDING TO INCLUDE THE BARTOW REPOWERING PROJECT IN BASE RATES* has been furnished by U.S. Mail and electronic mail to the following parties on this 3rd day of April, 2009

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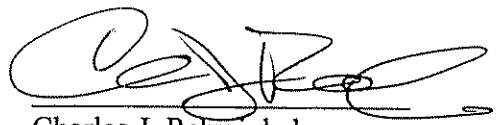

Charles J. Rehwinkel
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