

BEFORE THE PUBLIC SERVICE COMMISSION

In Re: Petition for increase in rates by
Progress Energy Florida, Inc.

Docket No.090079-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: July 02, 2009

**PETITION PROTESTING PORTIONS OF
THE PROPOSED AGENCY ACTION AND TARIFF
ORDER NO. PSC-09-0415-PAA-EI**

The Citizens of the State of Florida (Citizens) through the Office of Public Counsel, the Florida Industrial Power Users Group (FIPUG), the Attorney General, the Florida Retail Federation ("FRF"), and PCS Phosphate (collectively "Intervenors"), by and through undersigned counsel, pursuant to Section 120.57, F.S., and Rules 25-22.029 and 28-106.201, F.A.C., file this protest to portions of the Florida Public Service Commission's (Commission) Order No. PSC-09-0415-PAA-EI, issued June 12, 2009 (Order). In that Order, the Commission approved, in part, a rate increase for Progress Energy Florida, Inc. (PEF or Company), and ordered held subject to refund \$126 million in increased revenues pending a final determination of the revenue requirement for PEF's Bartow Repowering Project (BRP) in the pending base rate proceeding. In support of their Petition, Intervenors state as follows:

1. The name and address of the agency affected and the agency's file number:

Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, Florida 32399-0850
Docket Nos.: 090079-EI, 090144-EI

2. The Citizens include the customers of PEF whose substantial interests will be affected by the Order because the Order authorizes PEF to collect from its customers the proposed rate

increase. Additionally, Citizens of Florida who are customers of other utilities generally will be adversely affected by the erroneous precedent established.

3. FIPUG and FRF participating companies are companies who take service from PEF. FIPUG and PRF participating companies' substantial interests will be affected by the Order because it permits PEF to collect additional, higher rates from FIPUG and FRF companies.

4. PCS Phosphate is a manufacturer of fertilizer products with plants and operations located within PEF's electric service territory.¹ PCS Phosphate receives service under various PEF rate schedules.

5. Article IV, Section 4 of the Florida Constitution provides that the Attorney General is the chief state legal officer. The courts have long recognized that the Attorney General, as chief state legal officer, is authorized to intervene in all actions affecting the citizens of Florida.

6. Pursuant to Section 350.11, F.S., the Citizens who file this Petition are represented by the Office of Public Counsel ("Citizens" or "OPC") with the following address and telephone number:

Office of Public Counsel c/o The Florida Legislature
111 West Madison Street, Room 812
Tallahassee, Florida 32399-1400
Telephone No. : (850) 488-9330

7. FIPUG participating companies are represented by:

Jon C. Moyle, Jr.
Vicki Gordon Kaufman
Keefe Anchors Gordon & Moyle
118 North Gadsden Street
Tallahassee, Florida 32301
Telephone No.: (850) 681-3828

John McWhirter, Jr.

¹ The White Springs phosphate mining facilities are on approximately 100,000 acres (160 square miles) located in Hamilton County, Florida, and employs approximately 1,185 individuals.

PO Box 3350
Tampa, FL 33601-3350
Telephone No.: (813) 505-8055

8. Copies of all pleadings, notices, orders, discovery responses, and other documents filed in this proceeding should be served on the Florida Retail Federation's representatives as follows:

Robert Scheffel Wright
John T. Lavia, III
Young van Assenderp, P.A.
225 South Adams Street, Suite 200
Tallahassee, Florida 32301
Telephone (850) 222-7206
Facsimile (850) 561-6834

9. All pleadings, motions, orders and other documents directed to White Springs Agricultural Chemicals, Inc. d/b/a PCS Phosphate – White Springs should be served on:

James W. Brew
F. Alvin Taylor
Brickfield, Burchette, Ritts & Stone, P.C.
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10. Copies of all pleadings, motions, orders, and other documents filed in this proceeding should be served on the Attorney General's representatives as follows:

Cecilia Bradley
Senior Assistant Attorney General
Office of the Attorney General
The Capitol – PL01
Tallahassee, FL 32399-1050

11. Intervenors obtained a copy of the Order from the Commission's website on June 15, 2009.

12. At this time the disputed issues of material facts, including a concise statement of the ultimate facts alleged and those facts which Intervenors contend warrant reversal and/or modification of the agency's proposed action are set out below. Intervenors assert that the rate base, the net operating income (NOI), and the revenue requirement approved in the Order are overstated. Since the rate base, NOI, and revenue requirement are overstated, the Order results in rates that are unfair, unjust, and unreasonable. Pursuant to Section 366.06(1), F.S., the Commission has the authority and obligation to determine and fix fair, just, and reasonable rates. Adjustments should be made to rate base, NOI, revenue requirement, and resulting tariffs to make the rates fair, just, and reasonable for the customers of PEF.

13. Intervenors identify and protest the following fact, policy, and legal issues which are subject to dispute:

- a) Has PEF met its burden of proof that the increased rates associated with the BRP are fair, just, and reasonable?
- b) Has PEF demonstrated that the costs for the BRP have been prudently incurred?
- c) Has PEF demonstrated that the costs for the BRP are reasonable?
- d) Has PEF violated the terms of the Stipulation approved in Order No. PSC-05-0945-S-EI by seeking to include costs related to BRP in rate base prior to the expiration of the Stipulation?
- e) Is PEF legally entitled to charge its customers the increased rates for BRP, without a hearing pursuant to Section 120.57 F.S.? (The increased rates related to placing BRP in service are shown in that portion of the tariffs related to BRP and

contained in Exhibit (PT-4) and Exhibit (PT-5), appended to and filed with the testimony of Peter Toomey on March 20, 2009 in Docket No. 090079-EI)

f) Has PEF demonstrated that the costs, including the cost of money (e.g., costs of common equity, debt, cost-free capital, tax credits, customer deposits, in calculating AFUDC), are fair, reasonable, and appropriate for the purpose of determining the revenue requirement associated with the BRP?

g) Does the Stipulation approved in Order No. PSC-05-0945-S-EI prohibit PEF from increasing customer rates for substantially all (annually \$126 million) of the revenue requirement associated with the BRP prior to an evidentiary hearing pursuant to Section 120.57, F.S.?

h) Does the file and suspend law, Section 366.04, F.S., prohibit PEF from increasing customer rates for substantially all of the revenue requirement associated with the BRP prior to an evidentiary hearing pursuant to Section 120.57, F.S.?

i) If PEF is authorized to increase interim rates in the amount of \$6.5 million as set out in Order No. PSC-09-0413-PCO-EI, pursuant to Section 366.07, F.S., is PEF then authorized pursuant to the Stipulation to increase customer rates associated with BRP on an interim basis?

14. Pursuant to Rule 28-106.201, F.A.C., and the requirements of Order No. PSC-09-0415-PAA-EI, Intervenors, for the reasons set forth above, also protest and request a hearing on the tariff approved in Order No. PSC-09-0415-PAA-EI.

15. Intervenors are entitled to relief pursuant to Sections 120.57, 366.06(1), 366.04, and 366.071 F.S. and Rules 25-22.029 and 28-106.201, F.A.C

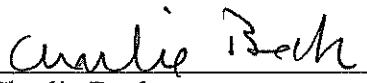
16. Order No. PSC-09-0415-PAA-EI states that protests of the Order shall be filed with the clerk of the Office of Commission Clerk no later than close of business on July 3, 2009. Because July 3rd is a state holiday, this Protest has been timely filed on July 2nd in an abundance of caution.

17. Intervenors request that the Commission set the Proposed Agency Action Order No. PSC-09-0415-PAA-EI, for hearing on PEF's proposed rate base, net operating income, and revenue requirement and tariff.

WHEREFORE, the Intervenors hereby protest and object to Commission Order No. PSC-09-0415-PAA-EI, as set forth above, and petition the Commission to conduct a formal evidentiary hearing on PEF's request to include the BRP in base rates, pursuant to Section 120.57(1), F.S.

Respectfully Submitted,

JR Kelly
Public Counsel


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DOCKET NO. 090079-EI
DOCKET NO. 090144
CERTIFICATE OF SERVICE

I, **HEREBY CERTIFY** that a true and correct copy of the Office of Public Counsel's Petition Protesting Portions of the Proposed Agency Action had been furnished by electronic mail and U.S. Mail on this 2nd day of July, 2009, to the following:

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