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090079-EI

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Subject: Filing: Docket 090079
Attachments: PEF Response in Opposition to AG's Motion in Limine.pdf



PEF Response
Opposition to .

<<PEF Response in Opposition to AG's Motion in Limine.pdf>> Docket

090079

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

1. This filing is made by

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2. This filing is Progress Energy Florida, Inc.'s Response in Opposition to Attorney General's Motion in Limine.

3. This filing consists of three (3) pages.

4. This filing is made on behalf of Progress Energy Florida, Inc.

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Petition for Increase in Rates by
Progress Energy Florida, Inc.

Docket No. 090079-EI

Submitted for filing: September 14, 2009

**PROGRESS ENERGY FLORIDA INC.'S RESPONSE IN OPPOSITION
TO ATTORNEY GENERAL'S MOTION IN LIMINE**

Progress Energy Florida, Inc. ("PEF") files this response in opposition to the Attorney General's ("AG's") motion in limine, and states:

1. On September 4, 2009, the AG filed a motion in limine requesting that the Commission enter an order specifying that any late-filed exhibits should be limited to the information requested or approved by the Commission. The AG further requested that no late-filed exhibit should be admitted unless and until the other parties have had an opportunity to cross-examine the witness who prepared the exhibit and had the opportunity to file testimony and exhibits in opposition to the late-filed exhibit.

2. The AG's motion in limine is premature. Although late-filed exhibits are routinely accepted, and even requested, by the Commission,¹ no late-filed exhibits have been (or could have been) requested at this point. It would be improper to enter a blanket order at this time limiting what may be relevant information prior to a party actually offering it into the record. If and when a party requests a late-filed exhibit and another party makes a timely objection, the Commission can rule at that time on a case-by-case basis on what conditions, if any, should be placed on its admission.

¹ *E.g., In re Application for increase in water rates for Seven Springs System in Pasco County by Aloha Utilities, Inc.*, Order No. PSC-02-0111-PCO-WU issued January 24, 2002 in Docket No. 010503-WU.

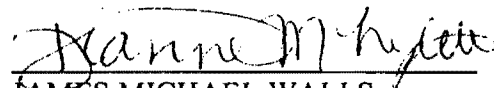
3. Late-filed exhibits can be filed both before and after the close of the hearing.

When they are filed before the close of the hearing, they are little different than exhibits attached to rebuttal testimony. In both instances, opposing parties are given an opportunity for cross-examination. In neither instance is there an opportunity for the opposing party to file rebuttal testimony or exhibits.

4. For late-filed exhibits to be filed after the close of the hearing, the Commission may consider on a case-by-case basis what procedures are appropriate to protect the due process rights of the parties. It is simply premature to enter a blanket order on the handling of late-filed exhibits, particularly an order that would provide an absolute right to file additional testimony and exhibits in opposition to any such exhibit.

WHEREFORE, PEF respectfully requests that the Commission deny the AG's motion in limine, and determine the proper procedures for handling such exhibits on a case-by-case basis if and when a late-filed exhibit is requested and a timely objection is made.

Respectfully submitted,



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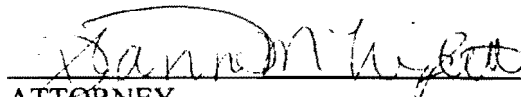
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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been served via electronic and U.S. Mail to the following counsel of record as indicated below on this 14th day of September, 2009.


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