

**Ruth Nettles**

090079-EI  
090144-EI  
090145-EI

**From:** WOODS.MONICA [WOODS.MONICA@leg.state.fl.us]  
**Sent:** Wednesday, September 16, 2009 11:15 AM  
**To:** Filings@psc.state.fl.us  
**Cc:** Alex Glenn; Alexander, Stephanie; Audrey VanDyke; Bill Schultz; C. Bradley; Caroline Klancke; Dan Lawton; Dan Moore; Dianne Triplett; Erik Saylor; F. Alvin Taylor; J. Burnett; J. McWhirter; J. Pous; J. Woolridge; James Brew; John C. Moyle, Jr.; John T. LaVia; Joseph L. Adams; K. Dismukes; Katherine Fleming; Keino Young; Karin S. Torain; Khojasteh Davoodi; M. Walls; Paul Lewis; Charles Rehwinkel; Richard Melson; S. Wright; BOYD.SCOTT; V. Kaufman; Vicki Kaufman  
**Subject:** 090079 Motion to Reschedule Evidentiary Hearings  
**Attachments:** Motion to Reschedule 9.16.09 (FINAL).pdf

Electronic Filing

a. Person responsible for this electronic filing:

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b. Docket No. 090079-EI

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

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

d. There are a total of 6 pages.

e. The document attached for electronic filing is Office of Public Counsel's MOTION TO RESCHEDULE EVIDENTIARY HEARINGS OR, IN THE ALTERNATIVE FOR OTHER RELIEF.  
(Please see attached - Motion to Reschedule 9.16.09 FINAL )  
Thank you for your attention and cooperation to this request.

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DOCUMENT NUMBER-DATE  
09587 SEP 16 8  
FPSC-COMMISSION CLERK

**BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION**

In re: Petition for increase in rates by Progress Energy Florida, Inc.	DOCKET NO. 090079-EI
In re: Petition for limited proceeding to include Bartow repowering project in base rates, by Progress Energy Florida, Inc.	DOCKET NO. 090144-EI
In re: Petition for expedited approval of the deferral of pension expenses, authorization to charge storm hardening expenses to the storm damage reserve, and variance from or waiver of Rule 25-6.0143(1)(c), (d), and (f), F.A.C., by Progress Energy Florida, Inc.	DOCKET NO. 090145-EI FILED: September 16, 2009

**MOTION TO RESCHEDULE EVIDENTIARY HEARINGS OR, IN THE  
ALTERNATIVE, FOR OTHER RELIEF**

The Citizens of Florida, through the Office of Public Counsel, Attorney General Bill McCollum, the Florida Retail Federation, the Florida Industrial Power Users Group, and White Springs Agricultural Chemicals, d/b/a PCS Phosphate (Intervenors) file this motion requesting that the Florida Public Service Commission (Commission) reschedule the evidentiary hearings in this case for February, 2010, because on August 31, 2009, Progress Energy Florida (PEF) effectively amended and refiled their March 20, 2009 "Petition for Approval of a Permanent Increase in Base Rates and Service Charges." In support of this motion, the Intervenors state the following:

PEF initiated this case on March 20, 2009, when the company filed its "Petition for Approval of a Permanent Increase in Base Rates and Service Charges." In its petition, PEF requested approval of a permanent increase in base rates and service charges sufficient to

generate additional total annual base revenues of approximately \$499 million. Petition at 1. That request, in turn, was based upon PEF's detailed forecast of its operations during 2010, including revenues, expenses, rate base, and capital structure. Intervenors relied on those detailed forecasts in preparation of their cases, which were filed on August 10, 2009.<sup>1</sup>

On August 31, 2009, PEF effectively amended its request from an annual increase of \$499.997 million per year to an increase of \$593.237 million per year by filing a new load and energy forecast in its rebuttal testimony. Exhibit PT-17 attached to the rebuttal testimony of Peter Toomey (entitled "Summary of Adjustments") shows the initial request for a revenue increase of \$499.997 million per year as "Retail as Filed" and its revised request of \$593.237 million per year as "Fully Adjusted."

PEF may deny that it is proposing an increase to its initial rate case request based on the updated sales forecast (Toomey rebuttal, pages 31 and 32), but in effect that is exactly what it is doing by requesting an "adjustment" for the new sales forecast. While claiming that the company is not proposing an increase to its initial request, PEF witness Toomey goes on to state that the new sales forecast would result in an increase in revenue requirements of \$94.8 million per year. That, according to Toomey, along with adjustments of \$(1.6) million per year to which PEF agrees, result in a net increase in revenue requirements, as summarized in his exhibit PT-17. Toomey rebuttal at 33. In other words, just three weeks before the evidentiary hearings scheduled in these proceedings, and weeks after intervenors have had their only chance to submit testimony, PEF is attempting to increase its rate request by \$94.8 million per year. By doing so, PEF has "restarted the clock" for its rate case.

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<sup>1</sup> PEF filed a supplement to OPC interrogatory 118 on June 17, 2009, containing the revised sales forecast. The interrogatory asked "have any revisions been made to the Company's 2010 budget/forecast since the version used in preparing the MFRs was developed? If yes, provide a detailed description of all revisions and changes and specifically identify the impact on the amounts included in the MFRs." In a supplemental response, PEF just attached an 86 page document with no explanation and did not indicate that MFRs were impacted.

Other rebuttal witnesses of PEF confirm that PEF changed its case on August 31. In response to the question “What conclusions can be drawn from PEF’s updated load forecast?”, Rebuttal witness John B. Crisp responds that “... lower load and sales means that PEF needs increased revenue requirements to cover costs.” Crisp rebuttal at 16-17. Rebuttal witness William C. Slusser, Jr., filed a completely revised jurisdictional separation study (Exhibit No. WCS-12) to reflect the new sales forecast -- something that would be unnecessary and irrelevant if PEF were not amending its case to seek an additional \$94.8 million per year.

The Commission cannot allow PEF to amend its case for an additional \$94.8 million per year at this late hour without changing the filing date for this new case to August 31, 2009. To do otherwise, would violate the parties’ due process rights to notice and an opportunity to be heard. Consideration of the new forecast would also violate section 120.57 (1)(b), Florida Statutes, which requires that “[a]ll parties shall have the opportunity to respond, to present evidence and argument on all issues. . . .” The revised forecast was not raised until the filing of PEF’s rebuttal, thus precluding a meaningful opportunity to respond.<sup>2</sup>

In order to allow intervenors to respond to this new case, the Commission should change the evidentiary hearing dates and set new dates for intervenors to file testimony responsive to PEF’s new case. Intervenors should be allowed to engage in full discovery prior to filing their additional testimony in December, 2009, and the Commission should set evidentiary hearings for February, 2010. This schedule will allow the Commission to decide the case before the eight month deadline for withholding consent under section 366.06(3), Florida Statutes, expires, while still providing intervenors a meaningful opportunity to respond to PEF’s new case.

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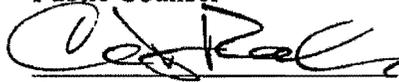
<sup>2</sup> See *General Development Utilities, Inc.*, 87 FPSC 10:356 (Order no. 18335 issued October 22, 1987), where the utility tried to increase the revenue requirements contained in its MFRs in testimony filed more than two months into the case. After objections from intervenors, the utility offered to strike the increased revenue requirement from its case, but the Commission, upon request of OPC to restart the clock, decided to continue the hearing until the utility corrected procedural problems and reconciled its MFRs with its testimony.

In the alternative, if the Commission declines to change the schedule in this proceeding, intervenors respectfully move the Commission to strike all testimony by PEF claiming additional revenue requirements on account of its new sales forecast. The Commission must not allow the company to proceed with a request for an additional \$94.8 million per year revenue requirement which was not included in its case filed on March 20, 2009.

**Wherefore,** Intervenors request the Commission to reschedule the evidentiary hearings as set forth in this motion, or, in the alternative, to strike all testimony by PEF claiming additional revenue requirements on account of its new sales forecast.

Respectfully Submitted,

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CERTIFICATE OF SERVICE  
DOCKET NO. 090079-EI

I HEREBY CERTIFY that a copy of the foregoing has been furnished by U.S. Mail on  
the 16<sup>th</sup> day of September 2009.

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