

Ruth Nettles

090079-EI

From: Stright, Lisa [Lisa.Stright@pgnmail.com]
Sent: Monday, October 12, 2009 11:56 AM
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Subject: PEF's Response Regarding Rate Case Schedule - Dkt# 090079-EI
Attachments: Document.pdf

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Docket No. 090079-EI

On behalf of Progress Energy Florida

Consisting of 5 pages.

**The attached document for filing is PEF's
Response Regarding Rate Case Schedule
in the above referenced docket.**

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DOCUMENT NUMBER-DATE

10455 OCT 12 8

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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

DATED: October 12, 2009

PROGRESS ENERGY FLORIDA, INC.'S RESPONSE
REGARDING RATE CASE SCHEDULE

On October 8, 2009, PSC Acting General Counsel, Mary Anne Helton, requested that Progress Energy Florida, Inc. ("PEF" or the "Company") respond to two issues regarding its pending rate case schedule. PEF hereby submits its Response Regarding Rate Case Schedule and Brief in this matter and states as follows:

I. General Position.

Progress Energy Florida favors adhering to the current schedule for reasons of fairness and accuracy. The schedule has been set for many months, and the parties have diligently worked to meet that schedule, which led to the timely completion of a nearly two-week evidentiary hearing on October 1, 2009. Deciding this matter in accordance with that schedule will provide all of the parties with the certainty that they anticipated when the schedule was established, and it is consistent with the timing requirements of Section 120.569(2)(I), F.S. Further, asking the incoming Commissioners to rule on a complex case, with a voluminous record, and without the benefit of participating in the proceedings is a difficult proposition, particularly given that it is the first matter they will have to decide.

On Staff's specific questions set forth in Ms. Helton's October 8, 2009 e-mail, PEF has the statutory right to implement new rates effective with the first billing cycle of January 2010. This is also consistent with our existing rate settlement, which expires the last billing cycle of

December 2009. If the Commission nonetheless defers a decision on our request until sometime after the last billing cycle in December 2009, Section 366.06(3), F.S., states that the proposed new rates shall go into effect subject to refund with interest. In accordance with the statutory language, and given the Company's declining sales, declining earned rate of return, and need for cash flow to pay for the investments it has made (and continues to make) and to cover increasing expenses, the Company will believe it will need to implement its new rates effective the first billing cycle of January 2010, subject to refund.

2. **Response to Staff's Specific Questions**

ISSUE 3: Can the Commission postpone its final decision in the Progress Energy Florida, Inc.'s Petition for Base Rate Increase, and if so, how? In responding, please specifically address the applicability of Sections 120.569(2)(1), and 366.06(3), Florida Statutes, as well as any other relevant statutory and case law.

PEF Response: The Commission could wait as late as December 30, 2009 to issue a final order without violating section 120.569(2)(1), F.S. Section 120.569(2)(1), F.S., provides that the Commission must issue its final order within 90 days from the date the hearing concluded. PEF's rate case hearing concluded on October 1, 2009. Pursuant to the 90-day requirement in Section 120.569(2)(1), F.S., the Commission must issue a final order by no later than December 30, 2009.

In the interest of fairness, PEF believes it is preferable for the Commission to act in accordance with this clear and unambiguous statutory framework, particularly when dealing with a matter of such significance to the Company and its customers. Delaying a decision

unnecessarily injects an element of uncertainty into the regulatory process which would be detrimental to all the participants.¹

ISSUE 4: If the Commission postpones its final decision in the PEF rate case, can PEF begin charging rates subject to refund on January 1, 2010? In responding, please explain the authority relied upon and include in your explanation how the 2005 Rate Case Stipulation affects PEF's ability to begin charging new rates. Also include in your response any alternatives available to the Commission and parties regarding collection of rates during the postponed decision timeframe.

PEF Response: As noted above, in the absence of a Commission vote on PEF's rate request, PEF can charge new rates beginning with the first billing cycle of January 2010. Such a collection would be subject to refund with interest. Absent PEF's 2005 Settlement Agreement, PEF would have been able to put the rates into effect by November 19, 2009. Section 366.06(3), F.S., states that the Commission "shall not" withhold consent to new rates "for a period longer than 8 months from the date of filing the new schedules" and that the "new rates or any portion not consented to shall go into effect under a bond or corporate undertaking at the end of such period" PEF filed its rate request and MFR schedules on March 20, 2009. Thus, the 8-month statutory clock runs on November 19, 2009. The Commission has no discretion to waive this statutorily imposed deadline.

PEF's 2005 Rate Settlement Agreement expires with the last billing cycle of December 2009 unless extended by PEF, at its sole option, for another 6-month period, which PEF has not

¹ Indeed, only five days ago, on October 7, 2009, Moody's stated that it viewed the politicized Florida rate cases as credit negative. Specifically, the rating agency stated that "Moody's views the highly politicized atmosphere surrounding the base rate proceedings of Florida Power & Light Company (FPL, A1 Issuer Rating) and Progress Energy Florida, Inc. (PEF, A3 Issuer Rating) as negative to the credit quality of both utilities and an indication that the political and regulatory environment for investor-owned utilities in Florida may be deteriorating. These base rate increases were filed during a period of challenging economic conditions in the state, which has recently begun to lose population, contributing to weak sales volumes at both utilities. Rate relief that is insufficient to maintain cash flow coverage metrics at or close to historical levels could pressure the credit ratings of both utilities." Moody's Release dated October 7, 2009. See also Key Banc Capital Markets Utilities Update, "Utility Industry – Regulation: Is Florida Going South?" dated October 12, 2009.

done. See Paragraph 1 of the 2005 Rate Settlement Agreement. As such, PEF will not place new rates into effect until the expiration of that agreement, or the first billing cycle of January 2010. Nowhere in the Settlement Agreement did PEF waive any of its rights under Sections 366.06(3) or 120.569, F.S.

RESPECTFULLY SUBMITTED this 12th day of October, 2009.

By:



A handwritten signature in black ink, appearing to read 'R. Alexander Glenn', is written over a horizontal line.

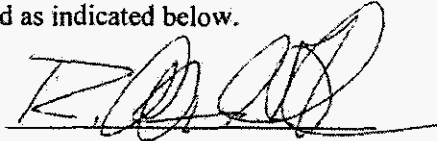
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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished via U.S.

Mail this 12th day of October, 2009 to all parties of record as indicated below.



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