

Ruth Nettles

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090145-EI

From: Lynette Tenace [ltenace@kagmlaw.com]
Sent: Thursday, March 25, 2010 4:33 PM
To: Filings@psc.state.fl.us
Cc: swright@yvlaw.net; rick@rmelsonlaw.com; cecilia.bradley@myfloridalegal.com; mwalls@carltonfields.com; bhuhta@carltonfields.com; jay.brew@bbrslaw.com; Katherine Fleming; Keino Young; Caroline Klancke; Erik Sayler; Charles Rehwinkel; dianne.triplett@pgnmail.com; dmoore@esgconsult.com; jmcwhirter@mac-law.com
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Attachments: FIPUG Response to PEF Motion for Reconsideration 03.25.10.pdf

In accordance with the electronic filing procedures of the Florida Public Service Commission, the following filing is made:

a. The name, address, telephone number and email for the person responsible for the filing is:

Vicki Gordon Kaufman
 Jon C. Moyle, Jr.
 Keefe Anchors Gordon & Moyle
 118 North Gadsden Street
 Tallahassee, FL 32301
 (850) 681-3828
vkaufman@kagmlaw.com
jmoyle@kagmlaw.com

b. This filing is made in Docket No. 090079-EI, In re: Petition for increase in rates by Progress Energy Florida, Inc.; Docket No. 090144-EI, In re: Petition for limited proceeding to include Bartow repowering project in base rates, by Progress Energy Florida, Inc.; Docket No. 090145-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.

c. The document is filed on behalf of Florida Industrial Power Users Group.

d. The total pages in the document are 7 pages.

e. The attached document is FIPUG's Response to Progress Energy Florida, Inc.'s Motion for Reconsideration.

Lynette Tenace

ltenace@kagmlaw.com



Keefe, Anchors, Gordon and Moyle, P.A.
 The Perkins House
 118 N. Gadsden St.
 Tallahassee, FL 32301
 850-681-3828 (Voice)
 850-681-8788 (Fax)
www.kagmlaw.com

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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

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: March 25, 2010

**THE FLORIDA INDUSTRIAL POWER USERS GROUP'S
RESPONSE TO PROGRESS ENERGY FLORIDA, INC.'S
MOTION FOR RECONSIDERATION**

The Florida Industrial Power Users Group (FIPUG), pursuant to rule 25-22.060, Florida Administrative Code, files this Response to Progress Energy Florida, Inc.'s (PEF) Motion for Reconsideration of Order No. PSC-10-0131-FOF-EI (Rate Case Order).

I. INTRODUCTION

On March 20, 2009, PEF filed a petition for an increase in its base rates. FIPUG intervened in the proceeding and its petition was granted on April 1, 2009.¹ The Commission held a hearing on PEF's request in September and October 2009. The Rate Case Order (Order) in the case was issued on March 5, 2010.

II. STANDARD FOR RECONSIDERATION

The standard of review for a motion for reconsideration is whether the motion identifies a point of fact or law which was overlooked or which the Commission failed to consider. *Stewart Bonded Warehouse, Inc. v. Bevis*, 294 So.2d 315 (Fla. 1974); *Diamond Cab Co. v. King*, 146

¹ Order No. PSC-09-0198-PCO-EI.

So.2d 889 (Fla. 1962); *Pingree v. Quaintance*, 394 So.2d 161 (Fla. 1st DCA 1981). While PEF claims that the matters it has raised are “mathematical mistakes,” PEF has failed to address the Commission’s over-arching goal in arriving at its decision in this matter.

III. COMMISSION’S RATEMAKING DISCRETION

It is well-settled that the Commission has broad discretion in ratemaking. *See, Citizens v. Public Service Commission*, 425 So.2d 534, 540 (Fla. 1982) (“This court has consistently recognized the broad legislative grant of authority which these statutes [Sections 366.06(2) and 366.05(D), Florida Statutes] confer and the considerable license the Commission enjoys as a result of this delegation.”); *Gulf Power Co. v. Bevis*, 296 So.2d 482,487 (Fla. 1974) (“As pointed out by the Commission, it has considerable discretion and latitude in the rate fixing process.”); *Storey v. Mavo*, 217 So.2d 304, 307 (Fla. 1968) (“The regulatory powers of the Commission . . . are exclusive and, therefore, necessarily broad and comprehensive.”); *City of Miami v. Florida Public Service Commission*, 208 So.2d 249, 253 (Fla. 1968) (“It is quite apparent that these statutes [Sections 364.14 and 366.06, Florida Statutes] repose considerable discretion in the Commission in the ratemaking process.”).

In the instant case, as discussed below, the Commission’s extended discussion at the Special Agenda Conference on January 11, 2010, makes it clear that the Commission exercised its discretion and carefully balanced the needs of the company and the needs of the ratepayers. In particular, the Commission was concerned that no rate increase be imposed on customers, if at all possible. The Commission used its broad discretion to fashion a solution by utilizing PEF’s very large theoretical reserve imbalance. The Commission’s ultimate intent – to use the very large theoretical reserve imbalance to protect ratepayers – must remain intact. Given that the

reserve imbalance is \$667 million, the Commission has ample discretion to ensure that its original intent is carried out.

IV. PEF'S MOTION FOR RECONSIDERATION²

It is undisputed that PEF had a theoretical reserve imbalance of \$697.4 million.³ That is, under the new approved depreciation rates, PEF has \$697 million too much in its depreciation reserve, which it collected from ratepayers. After several discrete adjustments the Commission approved at the Special Agenda Conference, the reserve imbalance was \$667 million.⁴

While PEF has raised nine grounds for reconsideration, which it claims are “mathematical mistakes,” each of these alleged mistakes relate to the calculation of PEF’s depreciation expense and accumulated depreciation reserve.⁵ Thus, it is critical to understand the Commission’s overarching decision on PEF’s depreciation reserve imbalance when evaluating PEF’s specific claims, which PEF wholly omits in its motion and in its description of “mathematical” errors.

The issues surrounding PEF’s depreciation calculations and particularly, its theoretical reserve imbalance were the subject of much testimony and debate at hearing. FIPUG witness Pollock recommended that to compensate for the large surplus, the Commission should order PEF to implement a \$100 million annual depreciation expense adjustment.⁶ OPC witness Pous recommended that the entire surplus be returned to customers over a four-year period.⁷ PEF

² Though PEF may argue otherwise, there does not appear to be an explicit request to change rates in its motion for reconsideration.

³ Rate Case Order at 45. This is the amount that would be in the reserve if the life and salvage estimates now considered appropriate had always been applied.

⁴ *Id.*

⁵ FIPUG is unable to verify PEF’s claims regarding alleged Commission “mistakes.” As to the largest “mistake” alleged (related to the inclusion of assets in the cost recovery clause), FIPUG received back-up documents in PDF format from PEF on March 23, 2010, but is obviously unable to view the formulas or inputs to such documents.

⁶ Staff recommendation, November 30, 2009, at 79.

⁷ *Id.*

recommended no action.⁸ As Staff member, Tim Devlin, said at the Special Agenda Conference: “During our briefings with the Commissioners it was apparent, really apparent that the handling of the depreciation reserve surplus was of great interest....”⁹ The Commission balanced the competing positions of the parties and the record evidence on this topic in reaching an appropriate result.

It is clear from the Special Agenda Conference transcript, that the Commission used its discretion to fashion a solution regarding this imbalance that it deemed fair to all parties. As Commissioner Skop explained:

. . . the ultimate question as to whether Progress customers will incur a rate increase or a rate increase will be ultimately decided by the discretion and judgment the Commission uses on essentially two issues, that of return on equity and, more importantly, the theoretical depreciation surplus.

...I think there is a, perhaps a win-win alternative that's not been considered in the staff recommendation that would achieve customers not having to have their bill go up, but also ensure the financial integrity of the company.¹⁰

Commissioner Skop later commented:

But I certainly think that an outcome can be achieved that would not result in a rate increase for Progress's customers, and I think that would be fair. I think there's a win-win solution here. But, you know, with a zero rate increase, keeping rates constant, basically you have margin to do that..... You're just merely offsetting those legally incurred expenses with the theoretical depreciation surplus amount over the amortization period.¹¹

...

. . . I'm looking at trying to do here, exercising discretion to achieve a fair outcome, but one that does not require a rate

⁸ *Id.*

⁹ Special Agenda Conference Transcript, January 11, 2010, at 8-9.

¹⁰ *Id.* at 4.

¹¹ *Id.* at 114-115.

increase, but it also preserves the financial integrity and the credit rating of the company.¹²

Further, as Commissioner Skop explained, depreciation is a non-case item:

Depreciation surplus is a non-cash item. Ratepayers have already paid into that, so basically, the company is just doing an accounting book entry to offset. They're not paying anyone back. They're just not collecting any more cash. They've already collected it....¹³

Commissioner Skop then endorsed the following action:

...take only what is necessary of the depreciation surplus to offset the residual revenue requirement. That way, if you have a zero revenue requirement, you have no rate increase, consumers win, and the company is kept healthy.¹⁴

The Commission agreed with this approach and the following motion was made and unanimously approved:

The motion would be to use a portion of the theoretical depreciation surplus to be amortized over four years to the extent necessary to zero out the revenue requirement.¹⁵

Thus, the Commission wanted to ensure that the ratepayers received no increase by employing its discretion to utilize a portion of the excess theoretical reserve. To the extent any adjustments are made as a result of PEF's motion, the Commission's stated purpose in reaching its decision on depreciation issues must remain intact.

Such a result can be achieved with no harm to the company. Currently, PEF's theoretical reserve imbalance is \$667 million. Even if all of PEF's adjustments are correct, they amount only to \$36 million.¹⁶ Thus, the net result of PEF's request is to reduce its theoretical reserve

¹² *Id.* at 137.

¹³ *Id.*

¹⁴ *Id.* at 137-138.

¹⁵ *Id.* 233-234.

¹⁶ PEF motion for reconsideration at 3-4.

imbalance to \$631 million --- thus, having very little impact on the company and accomplishing the Commission's purpose in its original rate case ruling.

WHEREFORE, in ruling on PEF's motion, the Commission should ensure that its intent that, due to the excessive theoretical reserve imbalance, ratepayers not receive an increase be implemented. To the extent that the Commission makes any of PEF's "adjustments," such adjustments should be accounted for by a reduction in the large theoretical reserve imbalance.

s/ Vicki Gordon Kaufman

Vicki Gordon Kaufman
Jon C. Moyle, Jr.
Keefe, Anchors, Gordon & Moyle
118 North Gadsden Street
Tallahassee, Florida 32301
Telephone: (850) 681-3828
Facsimile: (850) 681-8788
vkaufman@kagmlaw.com
jmoyle@kagmlaw.com

John W. McWhirter, Jr.
P.O. Box 3350
Tampa, Florida 33601-3350
Telephone: (813) 505-8055
Facsimile: (813) 221-1854
jmcwhirter@mac-law.com

Attorneys for the Florida Industrial Power Users
Group

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing Florida Industrial Power Users Group's Response to Progress Energy Florida Inc.'s Motion for Reconsideration has been served by electronic mail and First Class United States Mail this 25th day of March, 2010, to the following:

Robert Scheffel Wright/John T. LaVia III
Young van Assenderp, P.A.
Florida Retail Federation
225 South Adams Street, Suite 200
Tallahassee, Florida 32301
swright@yvlaw.net

Richard D. Melson
705 Piedmont Drive
Tallahassee, Florida 32312
rick@rmelsonlaw.com

Cecilia Bradley
Office of Attorney General
The Capitol, PL01
Tallahassee, Florida 32399-1050
cecilia.bradley@myfloridalegal.com

James W. Brew/F. Alvin Taylor
Brickfield Law Firm PCS Phosphate –
White Springs
1025 Thomas Jefferson Street, NW
Eighth Floor, West Tower
Washington, D.C. 20007-5201
jay.brew@bbrslaw.com

Dianne M. Tripplett
Progress Energy Florida
299 1st Avenue N PEF -152
St. Petersburg, FL 33701
dianne.tripplett@pgnmail.com

Katherine E. Fleming
Senior Attorney
Florida Public Service Commission
2540 Shumard Oak Blvd.
Tallahassee, FL 32399-0850
keflem@psc.state.fl.us
kyoung@psc.state.fl.us
cklancke@psc.state.fl.us
esayler@psc.state.fl.us

J.R. Kelly/Charles Rehwinkel
Office of Public Counsel
111 W. Madison Street, Room 812
Tallahassee, Florida 32399-1400
Rehwinkel.Charles@leg.state.fl.us

J. Michael Walls/Blaise N. Huhta
Carlton Fields Law Firm
Post Office Box 3239
Tampa, Florida 33601-3239
mwalls@carltonfields.com
bhuhta@carltonfields.com

Dan Moore
Association for Fairness In Rate Making
316 Maxwell Road, Suite 400
Alpharetta, GA 30009
dmoore@esgconsult.com

s/ Vicki Gordon Kaufman
Vicki Gordon Kaufman