

I. Meeting Packet



State of Florida
Public Service Commission
INTERNAL AFFAIRS AGENDA

Wednesday, May 25, 2011
9:30 a.m.

Room 140 - Betty Easley Conference Center

1. Approve April 27, 2011, Internal Affairs Meeting Minutes. (Attachment 1)
2. Briefing on the Duke Energy/Progress Energy Merger Application at the Federal Energy Regulatory Commission. Staff seeks guidance whether to file an intervention for monitoring purposes. Deadline to intervene is June 3, 2011. (Attachment 2)
3. Update on U.S. EPA Rulemakings. (Attachment 3)
4. Final Legislative Update. (No Attachment)
5. Other matters, if any.

TD/sa

OUTSIDE PERSONS WISHING TO ADDRESS THE COMMISSION ON
ANY OF THE AGENDAED ITEMS SHOULD CONTACT THE
OFFICE OF THE EXECUTIVE DIRECTOR AT (850) 413-6068.



State of Florida
Public Service Commission
INTERNAL AFFAIRS MINUTES

Wednesday, April 27, 2011

9:30 a.m. - 1:10 p.m.

Room 140 - Betty Easley Conference Center

COMMISSIONERS PRESENT: Chairman Graham
Commissioner Edgar
Commissioner Brisé
Commissioner Balbis
Commissioner Brown

STAFF PARTICIPATING: Devlin, Hill, Kiser, Pennington, Neal, Harlow, Miller, Muir

OTHERS PARTICIPATING: Randy LaBauve - Florida Power & Light Co.
John Butler - Florida Power & Light Co.
Paul Lewis, Jr. Bentina Terry and Mike Burroughs - Gulf
Power
Mike Kennedy and David Bruzek - Progress Energy
Florida
Howard Bryant and Paul Carpinone - Tampa Electric
Company
J. R. Kelly - Office of Public Counsel

1. Approve April 6, 2011, Internal Affairs Meeting Minutes.

Minutes were approved.

Commissioners participating: Graham, Edgar, Brisé, Balbis, Brown

2. Update on U.S. Environmental Protection Agency Rulemakings with Presentations by Investor-Owned Electric Utilities.

Presentations were made by: Florida Power & Light - Randy LaBauve; Gulf Power - Bentina Terry and Mike Burroughs; Progress Energy Florida - Mike Kennedy and David Bruzek; Tampa Electric - Paul Carpinone

Commissioners participating: Graham, Edgar, Brisé, Balbis, Brown

3. Legislative Update.

Ms. Pennington and Ms. Neal briefed the Commissioners on proposed legislative bills and other matters of interest.

Commissioners participating: Graham, Edgar, Brisé, Balbis, Brown

4. Other matters, if any.

- a. The Commission discussed the current trend of telemarketers making numerous calls to Floridians claiming to represent a utility company and offering a free energy audit. A discussion was held concerning this matter and if there was anything the Commission or the utilities could do to help stop this. Mr. Butler, FPL, said that he would have to take this issue under advisement and get back with the Commission to see if there was anything that the Commission could do and if the PSC needed to intervene.

Mr. J. R. Kelly, Public Counsel, advised that the Department of Agriculture and Consumer Services currently regulates telemarketers. They currently have an open investigation on this matter, specifically FPL's area. Mr. Kelly suggested that the utilities' and the PSC's hotline ask consumers who call in to call the Department of Agriculture and Consumer Services and file a complaint immediately. Agriculture is also trying to use Consumer Education Outreach programs.

Mr. Devlin advised of several areas that the Commission could use to get the information out there about the Department of Agriculture besides the hotline, by adding information on the Commission's Website under Hot Topics and the Consumer Corner. Mr. Kiser mentioned that the Commission may be able to get free television spots with advice concerning the problem. Ms. Muir advised that PIF is including this matter in the quarterly newsletter.

- b. The Chairman discussed the possibility of having a third party come in to do an audit of the Commission's telecommunications operations and functions in light of the deregulation of land-line telephone. To be reviewed would be what the Commission is currently doing and how resources could be maximized. The Executive Director provided a spread sheet with an estimate on reviewing the Commission's operations. The audit would consist of interviewing the Commissioners and staff to identify functions performed.

It was decided to move forward and pursue the feasibility of a Request For Proposal (RFP) or other alternatives, to be discussed at the next Internal Affairs Meeting. The Chairman will work closely with staff on preparing this review.


State of Florida



Public Service Commission

CAPITAL CIRCLE OFFICE CENTER • 2540 SHUMARD OAK BOULEVARD
TALLAHASSEE, FLORIDA 32399-0850

-M-E-M-O-R-A-N-D-U-M-

DATE: May 16, 2011
TO: Timothy J. Devlin, Executive Director
FROM: Cindy B. Miller, Senior Attorney, Office of the General Counsel *CM SMC.*
 JoAnn Chase, Senior Analyst, Division of Economic Regulation *QC* 
RE: Duke Energy/Progress Energy Merger Application at the Federal Energy Regulatory Commission

Critical Information: Please place on the May 25, 2011, Internal Affairs. Staff seeks guidance on whether to file a Notice of Intervention at FERC for monitoring purposes in the merger docket (Docket No. EC11-60-000) and the related Joint OATT tariff docket (Docket No. ER11-3307-000). The deadline to intervene in these FERC dockets is June 3, 2011.

At the Commission's Internal Affairs meeting on January 26, 2011, representatives from Progress Energy Florida presented an overview of the proposed merger of Duke Energy Corporation (Duke Energy) and Progress Energy, Inc. (Progress Energy). On April 4, 2011, Duke Energy and Progress Energy petitioned the Federal Energy Regulatory Commission (FERC) for merger approval. On April 5, 2011, the FERC issued a notice requiring that notices of intervention and/or comments be filed by June 3, 2011. The purpose of this memorandum is to seek guidance as to whether the Florida Public Service Commission (FPSC) should file a Notice of Intervention for monitoring purposes on this matter pending before the Federal Energy Regulatory Commission (FERC). Staff believes the FPSC should intervene as discussed below.

I. BACKGROUND

Duke Energy is a public utility holding company headquartered in Charlotte, North Carolina. Together with its subsidiaries, Duke Energy is a diversified energy company with both regulated and unregulated utility operations. Duke Energy's regulated electric utility subsidiaries operate in five states in the Southeast and Midwest regions, including North and South Carolina, Indiana, Ohio, and Kentucky. In its electric operations, Duke Energy has approximately 35,000 megawatts of generating capacity and serves 4.0 million customers. In addition to electric power, Duke Energy also distributes and sells natural gas to approximately 500,000 customers in Ohio and Kentucky.

Progress Energy is a North Carolina corporation, headquartered in Raleigh, North Carolina. The company owns approximately 22,000 megawatts of generation capacity and has

approximately \$10 billion in annual revenues. Progress Energy has two major electric utility subsidiaries operating in North and South Carolina and in Florida, serving approximately 3.1 million customers.

On April 4, 2011, Duke Energy and Progress Energy petitioned the FERC for merger approval pursuant to Section 203 of the Federal Power Act (FPA) and Part 33 of the FERC's regulations. The application at FERC was assigned Docket No. EC11-60-000. Under the terms of the Merger Agreement, Progress Energy will become a wholly-owned subsidiary of Duke Energy, and the former shareholders of Progress Energy will become shareholders of Duke Energy. Each share of Progress Energy common stock will be cancelled and converted into the right to receive 2.6125 shares of Duke Energy common stock, subject to certain adjustments. Following completion of the merger, it is anticipated that Duke Energy shareholders will own approximately 63 percent of the combined company, and Progress Energy shareholders will own approximately 37 percent. The applicants request that FERC grant its approval of this merger on or before July 31, 2011, and are targeting a closing on the merger by the end of 2011.

Concurrently with the merger application, Duke Energy and Progress Energy submitted a Joint Open Access Transmission Tariff (Joint OATT) under Section 205 of the FPA, which was assigned Docket No. ER11-3307-000.¹ Pursuant to the proposed Joint OATT, the applicants will provide transmission service in the Carolinas and in Florida at non-pancaked rates.² The Joint OATT maintains each company's existing rates as zonal rates.³

The Merger Application

Section 203(a) of the FPA provides that the FERC must approve a merger if it finds that the consolidation will be consistent with the public interest. The FERC's analysis under its Merger Policy Statement of whether a consolidation is consistent with the public interest generally involves consideration of three factors: (1) the effect on competition; (2) the effect on wholesale rates; and (3) the effect on regulation. In the Petition and the voluminous attached exhibits and testimony, the applicants assert that the proposed merger is consistent with the public interest, when considering these three factors.⁴

The applicants maintain that there is no adverse impact on competition resulting from the proposed merger. Specifically, Duke Energy does not have any generation in competition with Progress Energy's significant generation assets located in Florida. In fact, the application notes

¹ The applicants also filed a Joint Dispatch Agreement, pursuant to which Duke Energy Carolinas, LLC and Progress Energy Carolinas, Inc. will jointly dispatch their generation fleets in order to operate their systems more economically for the benefit of their customers. (FERC Docket No. ER11-3306-000) While the Joint OATT docket will potentially impact transmission rates in Florida, the Joint Dispatch Agreement affects only the utilities operating in the Carolinas.

² Rate Pancaking refers to multiple, but separate, charges that a utility incurs each time its generation must be transmitted over another utility's transmission facilities in order to reach load being served.

³ The FERC application, pages 13-14.

⁴ The applicants state the FERC and the federal courts have interpreted public interest to mean the applicants are not required to demonstrate that a proposed merger positively benefits the public, but rather only that the proposed merger does not harm the public interest.

that the only region where the applicants own overlapping generation is in the Carolinas, and that capacity is devoted almost exclusively to serving the retail and wholesale customers in their respective service areas. Further, Progress Energy has completely exited the competitive wholesale business, and Duke Energy owns no merchant generation in the Carolinas.⁵ The application contains testimony that evaluates the potential competitive impact of the merger, concluding that the merger would not have a significant effect on competition in the markets served by the applicants.⁶

When considering the impacts on wholesale rates, the FERC looks primarily at impacts on transmission rates and on rates for captive long-term wholesale customers. The applicants state there will be no adverse impact on wholesale rates, asserting that rates could be reduced due to the fuel savings in the Carolinas resulting from the Joint Dispatch Agreement and other fuel-related synergies. Further, the applicants commit to hold harmless wholesale requirements and transmission customers from the costs of the transaction for a period of five years. They will not seek to include merger-related costs in the wholesale rates, "except to the extent they can demonstrate that merger-related savings are equal to or in excess of the transaction-related costs included in the rate filing."⁷

The application also maintains that there will be no adverse impact on regulation. The FERC would not ordinarily set a merger application for hearing with respect to the impact on regulation unless: (a) the proposed transaction involves public utility subsidiaries of a registered holding company under the Public Utility Holding Company Act and the relevant applicants do not commit to abide by the FERC's policies on pricing of non-power goods and service between affiliates, or (b) the affected state commissions lack authority over the proposed transaction and raise concerns about the effect on state regulation.⁸ According to the applicants, neither of these concerns is raised in this case. The applicants maintain that the state utility commissions in North Carolina, South Carolina and Kentucky each will have the authority to review the effect of the merger on their jurisdiction, and thus, under the Merger Policy Statement, the FERC does not consider the effect of the transaction on those state commissions. The applicants have filed for merger approval with the state utility commissions in these three states. Further, the applicants assert that, while other state commissions do not have jurisdiction to review the transaction (including Florida, Ohio and Indiana), none of these commissions will have its jurisdiction affected by the merger transaction.⁹

In addition, the applicants state that the merger transaction would not result in cross-subsidization of a non-utility associate company to the detriment of wholesale or retail customers. The applicants maintain that the transaction will not result in any transfer of facilities, issuances or pledges of assets, or other agreements between any regulated utility subsidiary and an associate company.¹⁰

⁵ The FERC application, pages 16-31.

⁶ The FERC application, Exhibit J.

⁷ The FERC application, pages 32-33.

⁸ See Order No. 642, FERC Stats. & Regs. Paragraphs 31,111 at 31,914-15.

⁹ The FERC application, pages 34-35.

¹⁰ The FERC application, pages 35-36 and Exhibit M to the Application.

The application notes a number of benefits that will be possible if the transaction is completed:

- Fuel and related variable operation and maintenance savings will be achieved by jointly dispatching the combined generation fleets of Duke Energy and Progress Energy in North Carolina and South Carolina.
- Utility subsidiaries of the merged company will provide transmission in North Carolina, South Carolina and Florida pursuant to a Joint Open Access Transmission tariff that will eliminate transmission rate pancaking for transmission customers in these states.
- The integration of Duke Energy and Progress Energy and their service companies should create cost savings as a result of the combined information technology system, corporate and administrative programs, and more.
- The combined company will be stronger financially and will have enhanced access to capital.
- The large size will enable the company to achieve important scale and scope efficiencies.

Possible Effect on Florida Retail Customers

If the merger of Duke Energy and Progress Energy is approved, the combined company will become the largest electric utility in the U.S. in terms of enterprise value, market capitalization, electric customers, generation capacity, total assets and rate base. It will have a presence in six states in the Southeast and Midwest regions. The merger will create the largest U.S. regulated nuclear fleet, including seven stations and 12 units with approximately nine gigawatts of nuclear generation. The applicants assert that the size, diversity and leadership of the new company will result in increased reliability, safety and synergies, particularly for the contiguous systems located in North and South Carolina. Because of the geographic location of Progress Energy Florida and because it is already lean due to recent reductions, the synergies resulting from the merger are not expected to be as notable in Florida. However, the applicants assert that the stronger balance sheet, capital structure, and diversified generation capacity and fuel of the new company could inure to the benefit of Progress Energy Florida and its customers.

The applicants maintain that there will be no immediate effect on the retail rates of the wholesale or retail customers. Staff notes that the retail base rates of Progress Energy Florida are frozen through December 2012 as a result of a Settlement approved by the FPSC in the utility's last rate case.¹¹ As such, the potential effect of the merger on retail customers will not be at issue until after the term of the rate settlement.

¹¹ Order No. PSC-10-0398-S-EI, issued June 18, 2010, in Docket Nos. 090079-EI, 090144-EI, 090145-EI.

II. INTERVENTION

By its merger order and rule memorialized in Order No. 642, issued November 15, 2000, the FERC stated that it tries to avoid holding a hearing on merger applications because it leads to a delay of about a year. To date, motions to intervene have been filed by the North Carolina Utilities Commission, the South Carolina Office of Regulatory Staff, the Public Utilities Commission of Ohio, the Florida Municipal Power Agency (FMPA), the Southern Companies, the North Carolina Electric Membership Corp., the Public Works Commission of the City of Fayetteville, North Carolina, Exelon and others. The FPSC has previously intervened in merger applications before the FERC including the applications for merger of: (1) Florida Progress Corporation and CP&L Holdings, Inc. in 2000; (2) FPL and Entergy Services, Inc. in 2001; and (3) FPL Group, Inc. and Constellation Energy Group, Inc. in 2006.

FMPA filed a motion to intervene and a “request to cure data deficiencies.” FMPA states that it is concerned that the merger, if approved, “will impact already constrained market competition in Peninsular Florida.” They state that the applicants’ failure to include Competitive Analysis Screens for the Florida markets prevents the FERC and others from adequately analyzing potential merger impacts. “Because the applicants control much of the data needed for such an analysis,” FMPA requests FERC to issue an order requiring the applicants to file market studies. Duke Energy and Progress Energy filed an answer in opposition to FMPA’s motion regarding a market study.

Staff believes the FPSC should intervene for monitoring purposes in the FERC merger docket and the Joint OATT tariff docket for the following reasons. First, by intervening in these dockets, the FPSC would be served with documents filed with the FERC from all parties to the dockets. This would include any documents which may be filed as confidential, if necessary and in accordance with certain procedures. Second, the FPSC would be able to address before the FERC any issue that could arise that would potentially have an adverse effect on Florida ratepayers. We have not identified any concerns at this time. Thus, we are not recommending that the Commission file comments. However, it is possible that issues could arise as the cases develop. For example, relevant issues could arise if a hearing is held.¹² Third, Section 366.015, Florida Statutes, encourages participation by the FPSC in federal agencies’ proceedings that affect those utilities over which the FPSC has primary regulatory jurisdiction. For these reasons, staff recommends that the FPSC intervene for monitoring purposes in the merger docket and in the Joint OATT docket at the FERC.

¹² Pursuant to FERC Rule 2.26, in cases where state commissions do not have authority to act on merger transactions, the FERC may set for hearing the issue of whether the transaction would impair effective state regulation. Also, the FERC may set the matter for hearing if the proposal raises substantial issues of relevant fact.

State of Florida



Public Service Commission

CAPITAL CIRCLE OFFICE CENTER • 2540 SHUMARD OAK BOULEVARD
TALLAHASSEE, FLORIDA 32399-0850

-M-E-M-O-R-A-N-D-U-M-

DATE: May 16, 2011
TO: Timothy J. Devlin, Executive Director
FROM: Judy G. Harlow, Division of Regulatory Analysis
 Cindy B. Miller, Office of the General Counsel *CM S.M.C. [Handwritten initials]*
RE: Update on U.S. EPA Rulemakings and Outreach Activities

Critical Information: Please place on the May 25, 2011 Internal Affairs.
 No action sought – informational only

At the April 27, 2011 Internal Affairs meeting, the Florida Public Service Commission (FPSC) directed its staff to provide regular briefings on events relating to the U.S. Environmental Protection Agency's (EPA) ongoing rulemakings. The FPSC also requested information on whether other state public utility commissions and regulatory associations intend to file comments on the proposed rules. The following contains an update on: (1) EPA's proposed Air Toxics rule, (2) EPA's proposed Cooling Water Intake Structures rule, (3) related activities of state commissions and regulatory associations, and (4) next steps.

Air Toxics Rule

- EPA published its proposed Air Toxics rule, also referred to as the Maximum Achievable Control Technology or MACT rule, in the Federal Register on May 3, 2011. EPA is required by Court Order to finalize a rule by November 16, 2011.
- EPA established a sixty-day comment period, with a deadline of July 5, 2011.
- On May 12, 2011, Chairman Graham sent a letter to EPA seeking a sixty-day extension of the comment deadline. The National Association of Regulatory Utility Commissioners (NARUC) has also sent a letter urging a sixty-day extension.
- EPA has scheduled public hearings on May 24, 2011, in Chicago and Philadelphia and on May 26, 2011, in Atlanta. Oral testimony is limited to five minutes per speaker. Detailed substantive comments are thus not anticipated. EPA does not plan to broadcast or webcast the hearings. Transcripts will be available on EPA's website after the hearings. Staff intends to review the transcripts.

- On May 25, 2011, the Bipartisan Policy Center will offer a webinar briefing on the proposed rule. Staff will monitor the webinar. The Bipartisan Policy Center was established by former U.S. Senators in 2007, with the purpose of developing policy solutions that can be embraced by both major political parties. Key members include former Senators Bob Dole, Howard Baker, George Mitchell, and Tom Daschle.
- A draft bill is circulating in Congress that would provide an exemption to owners of coal plants for emissions of air pollutants if they agree to retire the plants by the end of 2020, or submit alternative plans to the EPA for limiting emissions. At this time, the bill's Congressional sponsor, if any, is unknown.

Cooling Water Intake Structures Rule – Section 316(b) Rule

- EPA published its proposed Cooling Water Intake Structures rule, or Section 316(b) rule, in the Federal Register on April 20, 2011. EPA is required by Court order to finalize the rule by July 27, 2012.
- EPA established a ninety-day comment period, with a deadline of July 19, 2011.

State Commission Activities

- FPSC staff has contacted staff at other state commissions to discuss EPA's proposed rules and whether their commission intends to file comments, including the Georgia Public Service Commission, Tennessee Regulatory Authority, Kentucky Public Service Commission, North Carolina Utilities Commission, South Carolina Public Service Commission, Alabama Public Service Commission, and Louisiana Public Service Commission.
- The Kentucky Commission staff indicated that, according to presentations made by Kentucky's utilities, the Air Toxics rule could have a significant impact on the State. Kentucky has a cost recovery mechanism that includes an express "environmental surcharge" on customers' bills. The Kentucky Commission does not plan to file comments.
- The staff of the Alabama Public Service Commission intends to present draft comments on the Air Toxics rule to Commissioners for their consideration.
- According to NARUC staff, the Ohio and North Dakota Commissions also plan to file comments on the Air Toxics rule.
- The South Carolina Office of Regulatory Staff sent a letter to EPA on February 14, 2011, regarding the Cooling Water Intake Structures rule. (Attachment A). The letter urges that the EPA continue to allow state permitting agencies to determine best technology

available that maximizes net benefits on a site-specific basis, rather than using a one-size-fits-all standard.

Regulatory Association Activities

- NARUC has formed the Environmental Coordinating Committee, with the purpose of educating members on EPA's rulemakings and coordinating NARUC's approach to the proposed rules. FPSC staff are monitoring the Coordinating Committee conference calls. According to NARUC staff, the Coordinating Committee replaces the Task Force on Climate Policy. The Coordinating Committee is composed of the Vice Chairs of the related Committees of Electricity, Gas, Water, and Energy Resources and the Environment.
- The Southeastern Association of Regulatory Utility Commissioners (SEARUC) has not scheduled any action on EPA's rulemakings. However, Director Eddie Roberson of the Tennessee Regulatory Authority is open to doing so. The next conference is in Nashville on June 12 through 15, 2011. According to SEARUC's Executive Director, the EPA rulemakings are not on the agenda for a panel presentation, but she expects they will be discussed in a meeting of Commissioners. SEARUC has taken some coordinated actions on past Federal rulemakings, such as sending a letter. In other instances, the state commissions have taken individual state approaches.

Next Steps

- Staff will continue to monitor EPA's draft rulemakings and any related actions by NARUC, SEARUC, and other state commissions.
- Staff will continue to communicate with the staff of the Florida Department of Environmental Protection concerning its intent to file comments.
- Staff will continue gathering the most current cost and reliability impact information from the Florida IOUs.
- Staff plans to bring draft comments on EPA's proposed Air Toxics and Cooling Water Intake Structures rules to the June 29, 2011 Internal Affairs meeting for the FPSC's consideration. Staff will also prepare draft letters to the Florida delegation regarding the EPA rulemakings for the FPSC's consideration.



C. Dukes Scott
Executive Director

STATE OF SOUTH CAROLINA
OFFICE OF REGULATORY STAFF

1401 Main Street
Suite 850
Columbia, SC 29201

February 14, 2011

The Honorable Lisa Jackson, Administrator
U.S. Environmental Protection Agency
Mail Code: 28221T
1200 Pennsylvania Avenue, NW
Washington, DC 20460

RE: Proposed Regulation on Cooling Water Intake Structures

Dear Administrator Jackson,

I am writing on behalf of the South Carolina Office of Regulatory Staff ("ORS"), a South Carolina state agency statutorily mandated to represent the public interest in utility regulation of the major utility industries — electric, natural gas, telecommunications, water/wastewater, and transportation. In fulfilling our mission, we must balance the concerns of the using and consuming public, the economic development of South Carolina and the financial integrity of public utilities. Under South Carolina law, it is the duty and responsibility of the ORS to provide legal representation of the public interest before federal regulatory agencies and federal courts in proceedings that could affect the rates or service of any public utility.

Though the ORS does not routinely comment on EPA regulatory matters, we are increasingly concerned about federal regulations that may substantially impact electric utility rates in our State. We previously submitted comments to the EPA on the Coal Combustion Residuals ("CCRs") rule and are equally concerned about the impacts of a regulatory option EPA may pursue pertaining to Cooling Water Intake Structures under Section 316(b) of the Clean Water Act.

As you weigh your regulatory options, I urge you to continue to allow permitting agencies to determine best technology available that maximizes net benefits on a site-specific basis, rather than establishing a one-size-fits-all standard. This approach, by definition, ensures that benefits will exceed costs. In addition, this approach is consistent with President Obama's January 18, 2011 Executive Order 13563, which directs each agency to propose or adopt a regulation "only upon a reasoned determination that its benefits justify its costs," to tailor the regulation to impose least burden on society consistent with the regulatory objectives, and to choose regulatory approaches that "maximize net benefits."

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May 16, 2011

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The ORS is especially concerned about the potential loss in electric generating capacity and increased costs in South Carolina and elsewhere if the EPA pursues a one-size-fits-all, closed-cycle cooling system mandate. This approach could result in the need to retrofit more than 70% of the coal and nuclear power plants operated by the investor-owned utilities serving customers in South Carolina.¹ These costs would result in electric rate increases and would adversely affect the ratepayers in South Carolina who currently have 17.3% less disposable income than the average American² and face one of the Nation's highest unemployment rates of 10.7%.³ Further complicating the economic landscape in South Carolina is the fact that this state ranks 10th highest in average residential electric expenditures.⁴ Any increase in electric rates will have a substantial and detrimental impact on the already economically disadvantaged ratepayers in South Carolina.

Historically, EPA and state permit writers have applied a site specific approach when examining the impacts of existing cooling water intakes on the aquatic environment. This approach is supported by both the ORS and the South Carolina Department of Health and Environmental Control ("DHEC"). DHEC is the South Carolina state agency that promotes and protects the health of the public and the environment.

Given the critical role of steam electric generation in meeting the Nation's need for electricity, I urge the EPA to consider the cumulative impact of its pending regulations and avoid imposing a new federal mandate that would require the retrofit of closed-cycle cooling systems at many existing electric generating stations, not only in South Carolina but throughout the United States.

For South Carolina, such a decision would increase the operating costs of investor-owned electric utilities, result in higher electric rates for South Carolinians, and threaten the ability of the State's utilities to provide reliable, affordable electric service. Furthermore, this decision would come at a time when we are experiencing increased energy costs and high unemployment.

Thank you for your careful consideration of this matter.

Sincerely,



C. Dukes Scott
Executive Director

cc: The Honorable Cass R. Sunstein, Office of Information and Regulatory Affairs
The Honorable Dr. Steven Chu, United State Secretary of Energy
Mr. Bill Daley, White House Chief of Staff
Mr. Jacob J. Lew, Director, Office of Management and Budget
The Honorable Thomas C. Alexander, South Carolina Senate

¹ This does not account for plants operated by the South Carolina Public Service Authority ("Santee Cooper"). The ORS has no regulatory oversight over Santee Cooper.

² 2009 Preliminary Census Data

³ South Carolina Department of Employment and Workforce (December 2010)

⁴ Energy Information Administration Data (2008)

May 16, 2011

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The Honorable Luke A. Rankin, South Carolina Senate
The Honorable C. Bradley Hutto, South Carolina Senate
The Honorable P. Michael Forrester, South Carolina House of Representatives
The Honorable Harry L. Ott, Jr., South Carolina House of Representatives
The Honorable William E. Sandifer, South Carolina House of Representatives
The Honorable Lindsey Graham, United States Senate
The Honorable Jim DeMint, United States Senate
The Honorable Tim Scott, U.S. House of Representatives, South Carolina 1st District
The Honorable Joe Wilson, U.S. House of Representatives, South Carolina 2nd District
The Honorable Jeff Duncan, U.S. House of Representatives, South Carolina 3rd District
The Honorable Trey Gowdy, U.S. House of Representatives, South Carolina 4th District
The Honorable Mick Mulvaney, U.S. House of Representatives, South Carolina 5th District
The Honorable James E. Clyburn, U.S. House of Representatives, South Carolina 6th District

II. Outside Persons Who Wish to Address the Commission at Internal Affairs

The records reflect that no outside persons addressed the Commission at this Internal Affairs meeting.

III. Supplemental Materials for Internal Affairs

A: Material pertaining to Item 4 of this agenda.

B: Material pertaining to Item 5 of this agenda.

**A: The following material pertains to
Item 4 of this agenda.**

Legislative Summary – Internal Affairs Meeting May 25, 2011

Bills tracked this Session

- Energy – 35
- Telecom – 4
- Water – 9
- Commission Specific – 4

Analysis written and requested by Legislature for “A” Priority Bills

- Energy – 14
- Telecom – 3
- Water – 1
- Commission Specific – 3

Bills that Passed Both Houses of the Legislature

CS/CS/HB 1231 The Regulatory Reform Act

- Signed by the Governor on May 5, 2011, effective July 1, 2011
- Eliminates retail regulation of local exchange telecommunications
- Eliminates rate caps on all retail telecommunications services
- Eliminates telecommunications related consumer protection and assistance duties of the FPSC
- Eliminates FPSC oversight of telecommunications service quality
- Reforms FPSC certification processes
- Repeals requirement to provide a flat-rate pricing option for local service
- Repeals authority to designate wireless carriers as Eligible Telecommunications Carriers for the purpose of receiving Universal Service Fund benefits (including Lifeline)
- Eliminates FPSC authority to compel repairs
 - rendering ineffective the Commission ordered pole inspection program
- Repeals requirement that the Commission disseminate information to consumers to assist in understanding the competitive market and billing related issues
- Repeals requirement that the Commission provide informational materials and conduct outreach to inform consumers of the benefits available through the Lifeline program (the Commission may continue to do so but is no longer required)
- Repeals specific prohibition against discriminatory pricing of telecommunications services
- Repeals requirement to inform new subscribers of the least cost service option
- Repeals specific consumer protection relating to cramming
- Restricts slamming complaints to those filed by carriers against other carriers
- Intercarrier issues amended to consolidate authority into a single section
- FPSC retains authority over
 - intercarrier disputes
 - arbitrations
 - interconnection agreements
 - numbering issues such as area code exhaust

~~Parties/Staff~~ Handout
~~Internal Affairs/Agenda~~
on 5/25/11
Item No. 4

- Requires the FPSC to initiate rulemaking by August 1, 2011, to reduce the regulatory assessment fee (RAF) factor for telecommunications companies to reflect the reduction in regulation resulting from the amendments to Chapter 364, F.S., that take affect July 1, 2011.

SB 2106 Relating to Florida Energy and Climate Commission

- Provisions contained will do the following;
 - Eliminates the Florida Energy and Climate Commission
 - Transfers the Energy Office from the Executive Office of the Governor to the Department of Agriculture and Consumer Services, including
 - Florida Renewable Energy and Efficiency Grants;
 - Florida Energy Climate Protection Program, which provides policy recommendations to the Governor and Legislature regarding energy use and conservation;
 - Administration of the federal State Energy Programs (SEP);
 - Provision of educational services;
 - Oversight of the Florida Energy Systems Consortium; and
 - Implementation of energy programs as directed by the Legislature.
 - The Division of Emergency Management, which is relocating to the Governor's Office, will have responsibilities related to petroleum supply, demand, allocation, security, and the state's energy emergency contingency plan.
 - The Department of Environmental Protection will have responsibility for the administration of the Coastal Energy Impact Program.
 - The Department of Management Services will have responsibility for coordinating the energy conservation programs for all state agencies.

HB 993 Administrative Procedures

- Requires that by December 1, 2011, agencies complete and publish a review and report on a biennial basis, the following:
 - Review of each rule to determine whether the rule has been reviewed by the OFARR pursuant to the Governor's Executive Order.
 - Review each rule to determine whether the rule is a revenue rule and must provide detailed information.
 - Review each rule to determine whether the rule is a data collection rule, and must provide detailed information.
 - Identification of each rule or subpart that the agency plans to amend to substantially reduce the economic impact and the estimated timetable for amendment.
 - Identification of each rule for which the agency must prepare a compliance economic review to include each rule that "probably will have any of the economic impacts described in section 120.54 (2)(a). (this is the \$1 million over five years requirement)
 - Listing of all rules identified for compliance economic review divided into two approximately equal groups.
- Public comment on the biennial review and report is established in the bill.
- The bill also defines a process for determining rules that require legislative ratification.

Bills that Did Not Pass

HB 7217 Relating to Energy Incentives/Renewable Energy

- This Omnibus energy bill introduced by the House Energy and Utilities Subcommittee would have done the following;
 - Allowed each IOU to petition to recover costs for up to two percent of 2010 revenues above avoided cost on renewable energy projects or purchases
 - IOUs could spend this amount on the following;
 - construction of new renewable energy facilities,
 - conversion of existing resources to renewable energy,
 - purchases of Florida renewable energy
 - Deleted from statute all language relating to a proposed RPS
 - Exempted all solar power facilities from the Electrical Power Plant Siting Act
 - Required the IOUs to spend at least 20 percent of the capacity for projects approved under this provision on non-solar sources
 - Required 5 percent of the costs spent on solar energy were directed to go to solar programs approved through the FEECA goals process
 - Projects for which a majority of the energy-producing components were manufactured in-state received a rate of return 50 basis points above the last authorized return on equity.
 - IOUs would have had sole discretion to determine the renewable projects they pursued.
 - IOUs would have needed to demonstrate that a project was ;
 - most cost-effective option for its type of renewable energy, and that it
 - used reasonable and customary industry practices

SB 2078 Relating to Energy

- This omnibus energy bill introduced by the Senate Communications, Energy, and Public Utilities Committee would have done the following;
 - Allowed each investor owned electric utility (IOU) to petition the FPSC, through July 1, 2016 to recover costs for up to 2 percent of 2010 revenues on renewable energy projects or purchases that could be spent on the following;
 - New construction
 - Conversion of existing resources
 - Renewable energy purchases
 - Instituted a energy planning process, the State Energy Resources Plan
 - Changed the avoided cost statute that likely would have forced changes in the FPSC's net metering rule for customer-owned rooftop solar systems
 - Deleted the RPS language from statute
 - Changes relating to commercial energy audits
 - Required 25 percent of the total nameplate capacity of projects funded under this section to come from non-solar resources
 - FPSC to develop and review a State Energy Resources Plan with a 10-year timeframe

- FPSC to forecast electrical demand and requirements
- FPSC would determine potential system constraints and alternatives to current resource types
- FPSC to identify resource additions to meet the following;
 - energy requirements
 - costs and risks of energy supply source alternatives
 - emerging trends in energy markets
 - potential future sites for renewable energy generation
 - including transmission and distribution lines
- Changes to the FPSC's net metering rule would have resulted in customers with solar equipment receiving less value for any excess energy
- Amendments to this bill would have done the following;
 - Required 5 percent of total spending to be directed towards demand-side renewable energy systems,
 - Half of these systems would have been required to be under 10 kW in size
 - Capped the customer impact at 2 percent of a customer's monthly bill
 - Capped costs at the IOUs' retail rate
 - IOUs would have had sole discretion how to spend these funds
 - These projects were subject to the same bid process as conventional generation

SB 0212 Relating to Public Service Commission

- This bill would have done the following;
 - Revised several sections of the Florida Statutes relating to ex parte communication and the standards of conduct for Commissioners of the Public Service Commission
 - Extended the existing ex parte restrictions to direct Commissioner staff
 - Required notification to the Office of Public Counsel when the Public Service Commission receives certain communications, and requires published summaries of such communications in certain instances
 - Prohibited former Public Service Commissioners and former members of a Commissioner's direct reporting staff from lobbying the legislative or executive branch of government for four years after termination of Commission service
 - This prohibition would have applied to Commissioners appointed or reappointed on or after July 1, 2011, and to commissioners' direct reporting staff hired on or after July 1, 2011
 - Given the Office of Public Counsel access to certain utility and company records and provides

HB 7211 Relating to Organization and Standards of the PSC

- This bill sponsored by the House Energy & Utilities Subcommittee would have done the following;
 - Adopted certain provisions from the Code of Judicial Conduct as standards of conduct applicable to commissioners

- Defined ex parte communications and prohibits commissioners and their direct staff from engaging in ex parte communications concerning substantive matters and certain procedural matters related to proposed agency action proceedings and formal proceedings under ss. 120.565, 120.569, or 120.57, F.S., or concerning the merits of any issue that he or she reasonably foresees will be filed with the PSC
- Expanded monetary penalties to apply to any individual who makes a prohibited ex parte communication and knowingly fails to comply with the reporting requirements of the law
- Provided that persons involved in the selection of PSC commissioners, including the Governor and specified legislative members, may not attempt to sway the independent judgment of the commission by bringing pressure to bear upon a commissioner
- Provided that an individual commissioner may not demand or require any member of the PSC staff, other than the commissioner's direct staff, to develop, present, or pursue a particular opinion, position, or course of action in relation to a pending substantive matter, and designates the PSC's inspector general to receive and investigate complaints of violations
- Established training and continuing education requirements, concerning substantive and ethical matters, for commissioners and PSC staff
- Specified the authority of the PSC to employ an executive director, a general counsel, and an inspector general
- Specified the authority of the executive director to serve as the agency head for certain purposes, such as personnel and procurement matters
- Required each person offering testimony in a PSC proceeding to disclose, at the time the testimony is offered, any financial or fiduciary relationship between the person and any party to the proceeding.

HB 0223 / SB 950 Relating to Water and Wastewater Utilities

- Proposed creation of section 367.0819, Florida Statutes (F.S.), to allow the following;
 - Water and wastewater utilities to recover, through a surcharge, prudently incurred capital costs for investment in non-revenue producing system improvements
 - Provided a mechanism for water and wastewater utilities to recover appropriate costs without the time and expense of an evidentiary hearing
 - A utility would have been required to file a tariff for Commission approval demonstrating the calculation of the following;
 - surcharge
 - notification to customers of the filing
 - disclosure of the surcharge as a separate line item on a customer's bill
- Define eligible projects and the appropriate manner in which companies may request cost recovery and how the surcharge should be implemented
 - Calculation of the surcharge must include recovery of depreciation and return on investment
 - Surcharge would be reevaluated on a quarterly basis based on supporting data submitted to the Florida Public Service Commission

- Surcharge may not exceed eight percent of otherwise applicable rates and charges approved by the Commission
- Surcharge shall be listed as a separate line charge on a customer's bill
- Surcharge is subject to annual true-up based on a period of 12 months

Issues Likely to Return in 2012

- RAF / Access Charges
- PSC Reform/Organizational Issues/Ethics/Ex Parte Communication
- Renewable Energy
- Water Issues

Interim Reports

- Not yet known

**B: The following material pertains to
Item 5 of this agenda.**



National Regulatory
Research Institute

February 1, 2011

Timothy J. Devlin
Executive Director
Florida Public Service Commission
2540 Shumard Oak Blvd.
Tallahassee, FL 32399

Dear Executive Director Devlin,

The National Regulatory Research Institute (NRRI) is pleased to present its cost proposal and work plan for an examination of the way in which the FL Public Service Commission's telecommunications staff can best meet the public's needs for ensuring the excellence of the state's telecommunications services and providers.

As we noted in our original "pre-proposal," the NRRI study will evaluate

- a. the Commission's current statutory responsibilities in order to determine which of these activities continue to be required in light of industry changes, including the current (and proposed) limits on the state's jurisdiction over its wholesale and retail telecommunications providers;
- b. whether current industry facts warrant changes to the Commission's authority in order to align that authority with the public's needs
- c. whether the present approach to staffing, internal education, work structure, and procedures warrants changes in light of the changing industry and regulatory structure.

The key outputs of this study will be (1) a formal report outlining the results of our study, (2) a matrix comparing the staff's current tasks to state jurisdictional requirements, (3) a proposal for redirecting staff efforts as required, and (4) a recommendation for the level of effort and structure required to perform these tasks effectively.

As you requested, we have created a draft task budget for advising the Commission on preparing to carry out its telecommunications responsibilities after this legislative session. You will find that budget at the back of this document, following this

Parties/Staff Handout
Internal Affairs Agenda
on 5/23/11
Item No. 5

8733 Georgia Avenue #201 Silver Spring Maryland 20910 (301) 588-5585



National Regulatory
Research Institute

cover memo and an outline of our approach. As you review the budget proposal, please keep the following comments in mind:

1. We have identified each likely task and assigned hours to it. This approach shows how we arrived at a total cost. It also allows you to make priority decisions should you need to modify the total. We do not view these individual task hours as fixed commitments, but rather as guideposts. Reality always varies from estimates.
2. We have used an hourly rate well below our current hourly rates, in light of current economic conditions.
3. We are open to discussing whether we would bill on a fixed fee basis or on an hourly basis. The key is to have clear expectations between us.
4. NRRI's approach to a project such as this is to seek ways to work with our constituents in whatever manner is most comfortable for them. We are, therefore, flexible in all respects. Please view this document as a starting point for conversation rather than a fixed proposal.

Thank you again for the opportunity to present these thoughts. If you have any questions, please contact Dr. Sherry Lichtenberg directly at 301-588-5385, ext. 309, or via email at slichtenberg@nrri.org.

Sherry Lichtenberg, Ph.D.

Cc: Scott Hempling

Proposed Work Breakdown Structure for Florida Telecommunications Study

- I. Communicate Project Mission to Commissioners and Staff**
 - A. Prepare draft memo for Commissioners to distribute internally explaining the project and describing expectations for staff participation
 - B. Meet with Commissioners, key staff, and others as required to describe project plan
 - C. Prepare final formal project plan based on input

- II. Define and Describe Proposed Alternative Methods for Carrying Out the Legislative Duties Required under the New Law, Including Both Staffing Models and Commission Procedures**
 - A. Study the legislation to identify the commission's new and revised statutory duties and responsibilities
 - B. Identify the range of processes and procedures necessary for effectively carrying out those duties; for example, rulemakings, contested cases, notices of inquiry, formal and informal investigations
 - C. Identify optional skill sets, and staffing levels and internal organizational relationships necessary to carry out the revised responsibilities
 - D. Identify educational requirements and other professional development needs

- III. Assess *Current Decisionmaking Procedures and Work Processes*, and Recommend Modifications Based on the Potential Models Described in Part II.**
 - A. Review staff responsibilities using internal documents, job descriptions, organization charts, and other materials
 - B. Interview staff and key stakeholders to identify key procedures and work processes
 - C. Create a descriptive matrix that relates current procedures to the new procedures required by the legislation

- IV. Assess Current Staffing *Levels, Experience, Education, and Workload*, and Recommend Modifications as Necessary**
 - A. Review commission responsibilities using internal documents, job descriptions, organization charts and other materials
 - B. Interview staff to determine current work organization and tasks
 - C. Create a descriptive matrix that relates current tasks to proposed tasks (post legislative revisions)

- V. Prepare and Submit Draft Report**

- VI. Host Meetings with Staff Commission Leadership, Key Constituents, and Others to be Determined to Review the Draft Recommendations**
 - A. Determine whether the new structure meets fiscal and operational requirements
 - B. Evaluate whether changes to the proposed new structure and procedures are required to ensure that all responsibilities and processes are included

- VII. Prepare Final Report Based on the Internal Conversation**

| Task | Lichtenberg Hours | Hempling Hours | Total Hours | Total Cost | Travel | Travel Details | Total Travel Cost |
|---|-------------------|----------------|-------------|------------|---------------|--|-------------------|
| I. Communicate project mission to Commissioners and staff | 21 | 12 | 33 | | SL +SH 1 day | Air and ground= 1200; Lodging = 300; food = 100 | \$1,600 |
| 1. Prepare draft project memo | 8 | 2 | | | | | |
| 2. Meet with stakeholders to describe project plan | 8 | 8 | | | | | |
| 3. Prepare formal project plan | 5 | 2 | | | | | |
| II. Define alternative methods and procedures | 41 | 21 | 62 | | | | |
| 1. Study old and new legislation to identify requirements | 10 | 5 | | | | | |
| 2. Identify required processes and procedures | 15 | 5 | | | | | |
| 3. Identify organization and skill sets | 8 | 1 | | | | | |
| 4. Identify educational requirements and professional development needs | 8 | 1 | | | | | |
| III. Assess current processes and procedures and recommend modifications | 26 | 2 | 28 | | | | |
| 1. Review current processes and procedures | 10 | 1 | | | | | |
| 2. Interview staff | 8 | | | | SL 2 days | Air=500; Lodging = 300; rental car=100; food=100 | \$1,000 |
| 3. Create matrix of current to new procedures | 8 | 1 | | | | | |
| IV. Assess current staffing | 18 | 4 | 22 | | | | |
| 1. Review responsibilities | 10 | 3 | | | | | |
| 2. Interview staff | | | | | | | |
| 3. Create matrix of current to new tasks | 8 | 1 | | | | | |
| V. Prepare draft report | 40 | 10 | 50 | | | | |
| VI. Host meetings to review draft recommendations | 8 | 8 | 16 | | SL + SH 1 day | Air=1000; Lodging=300; Food=100; Rental Car= 100 | \$1,500 |
| 1. Determine whether proposed structure meets requirements | | | | | | | |
| 2. Evaluate changed or missed requirements | | | | | | | |
| VI. Prepare final report | 30 | 10 | 40 | | | | |
| Total hours | | | 251 | | | | \$4,100 |
| Hours cost at \$200/hr | | | 50200 | | | | |
| Total proposal cost | \$54,300 | | | | | | |