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AARP docket
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> b. Docket No. 070052-EI
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> In re: Petition by Progress Energy Florida, Inc. to recover costs of
> Crystal River Unit 3 uprate through fuel clause.
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> c. Document being filed on behalf of AARP
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> d. There are a total of 12 pages.
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> e. The document attached for electronic filing is AARP's Post-Hearing
> Memorandum Brief and Statement of Positions.

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> s/ Michael B. Twomey
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> Thank you,
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> Mike Twomey
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BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In Re: Petition by Progress Energy Florida, Inc. to recover costs of Crystal River Unit 3 uprate through fuel clause	)	DOCKET NO. 070052-EI
	)	Filed: August 28, 2007

AARP'S POST-HEARING MEMORANDUM BRIEF AND STATEMENT OF POSITIONS

AARP, by its undersigned counsel, hereby submits its Post-hearing Memorandum Brief and Statement of Positions on the issues outstanding in this case.

AARP adopts the Post-Hearing brief of the Office of Public Counsel with the addition of its Comments on Basic Position below, as well as adopting the Office of Public Counsel's Post-Hearing Statements of Positions, with the exception of the position on Issue 2, which AARP states separately below.

AARP's COMMENTS ON BASIC POSTITION

The CR3 Uprate, if as cost-effective as proposed, should be accomplished regardless of whether Progress Energy Florida's ("PEF") cost recovery is achieved through base rates or an annual pass-through clause. PEF has a statutory obligation to provide its customers with efficient service and this Commission should see that it does. Full, traditional cost recovery for this large capital, non-fuel project is available through base rate recovery, whereas fuel clause recovery, or through other pass-through clauses, is inconsistent with basic rate-setting principles and this Commission's precedents. There is no statute or rule mandating the Commission's approval of PEF's instant petition. Furthermore, the Order No. 14546, Item 10 exception precedents cited by PEF to the Commission's "only fuel through the fuel clause" general

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practice are clearly distinguishable from PEF's current request by the substantially greater amount of money being sought from customers here, as well as the significantly longer amortization period being claimed for the instant project. Fuel clause or other pass-through clause surcharge recovery is detrimental to consumers because: (1) it will grant PEF a guaranteed return on its project investment rather than the statutory opportunity to earn a likely lower return through base rates, thus, causing customers to pay a greater return for the project and over a shorter period of years; and (2) the accelerated capital recovery of as little as 10 years through the fuel clause, as opposed to base rate recovery over the remaining life of CR3, which should be another 29 years until 2036, will necessarily cause intergenerational inequities between those customers paying for the project in the early years and those enjoying the bulk of the fuel savings in the later years. While no CR3 project dollars are appropriate for fuel clause treatment as Item 10 exceptions, the money sought for the transmission line expansion by PEF should be considered a more blatant departure from Commission precedent and consideration of its inclusion summarily discarded. Additionally, PEF's rate relief sought in this petition is contrary to its 2005 rate stipulation approved by this Commission and should not be allowed on that basis alone. To the extent that any project monies are allowed for recovery outside base rates, and AARP urges that they not be, then the costs of the project should be flowed through the fuel cost recovery clause because it is through the fuel adjustment clause that the presumed benefits of the project – reduced fuel costs – will be realized by customers.

Cost-effective improvements should be considered mandatory, not optional

If constructed and operated as proposed, the CR3 nuclear plant uprate should be a cost-effective modification that will result in PEF's customers receiving more economically efficient service. Pursuant to Section 366.03, F.S., PEF has a general duty as a public utility to furnish its

customers efficient service. Moreover, pursuant to Section 366.041(1), F.S. this Commission is authorized to give consideration to, among other things, "the efficiency, sufficiency, and adequacy of the facilities provided and the services rendered" when fixing the just, reasonable and compensatory rates and charges for PEF. PEF should not be heard to suggest to this Commission that it will not undertake this cost-effective modification unless it is awarded the guaranteed and accelerated return on its investment sought here. All witnesses testifying on the subject, including PEF's witness Javier Portuondo, agreed that the CR3 capital projects will be placed into rate base when they enter service and can begin earning a return immediately through base rates. If the resulting overall return is inadequate in PEF's view, then it can timely file a base rate case, seek interim and permanent rate increases and other relief authorized by law, so long as such as case is not precluded by its 2005 rate stipulation. Moreover, the Commission should be prepared to penalize this, and all other regulated utilities, who fail to implement known, cost-effective improvements to their operations.

There is no statue or rule mandating approval

There is no statute or rule compelling the outcome demanded by PEF in this case. Consequently, the Commission is not required to grant PEF's petition as if it were the only outcome available.

PEF's request does not comply with the Order 14546, Item 10 exception and is clearly distinguishable from the earlier approved exceptions cited by PEF

To the extent prior Commissions have granted Item 10 exceptions pursuant to Order 14546, even those exceptions tended to stray somewhat from the announced purpose for an exception that costs recoverable through the fuel clauses be direct fuel costs, or fossil fuel-related costs that were either volatile or "expenses normally recovered through base rates when

utilities are in a position to take advantage of a cost-effective transaction, the costs of which were not recognized or anticipated in the level of costs used to establish base rates." Order No. 14546, at 3. That recovery of investments in capital projects was not high on the Commission's agenda in July 1985, when it published Order No. 14546, is illustrated by the first sentence in the order: "As a result of issues raised by Staff in the February, 1985 fuel adjustment hearing, this docket was created to consider the proper means of recovery of fossil fuel-related expenses." Order No. 14546, at 1. Emphasis supplied. The clear emphasis of Order No. 14546 was on fossil fuels in 1985, although it is conceded that later Commission's considered and approved on project related to nuclear generating units. However, and more importantly, the greater emphasis of Order No. 14546 was the treatment of "fuel-related expenses," and not the recovery on capital investments, the latter of which is clearly a different regulatory category.

Laying out the scope of the fuel clause agreement between the parties, which it ultimately adopted in 1985, the Commission highlighted two essential points regarding the recovery of fossil fuel-related costs, saying, in part:

> In addition to identifying fossil fuel-related costs and their current means of recovery, the parties reached an agreement in their stipulation as to whether these costs should be recovered prospectively through base rates or through fuel adjustment clauses. The agreement regarding specific costs reflects a broader policy consensus for the recovery of fossil fuel-related costs. The policy agreed to among the parties and recommended to the Commission consisted of two essential points which appear to reflect the Commission's practical application of fuel adjustment clauses:
>
> > 1. When similar circumstances exist, the Commission should attempt to treat, for cost recovery purposes, specific types of fossil fuel-related expenses in a uniform manner among the various electric utilities. At times, however, it may be appropriate to treat similar types of expenses in dissimilar ways.
> >
> > 2. Prudently incurred fossil fuel-related expenses which are subject to volatile changes should be recovered through an electric utility's fuel adjustment clause. The volatility of fossil

> fuel-related costs may be due to a number of factors including, but not necessarily limited to: price, quantity, number of deliveries, and distance. Except as noted below, these volatile fossil fuel-related charges are incurred by the utility for goods obtained or services provided prior to the delivery of fuel to the electric utility's dedicated storage facilities. (Dedicated storage facilities mean storage facilities which are used solely to serve the affected electric utility.) All other fossil fuel-related costs should be recovered through base rates.

Order No. 14546, at 2. Emphasis supplied. The two points: (1) similar expenses may, at times, be treated in a dissimilar manner (consistent with the "case by case" discussion later in the order) and, (2) and more importantly for this case, just being categorized as a "fossil fuel-related cost" does not warrant fuel clause recovery, absent the specific cost being "subject to volatile changes." In the instant case it is clear that the costs sought for recovery, whether fossil fuel-related or not, are not remotely volatile as envisioned in Order No. 14546. The lack of volatility, coupled with the size and duration of the requested relief, argues, at the very least, for (1) a strict "case by case" review by the Commission, and (2) hopefully the treatment of these allegedly "similar" expenses in a manner dissimilar to the earlier approved five Item 10 exceptions.

Order No. 14546 continued with the Commission discussing the "invoiced fuel charges," and nine charges, fees, commissions or taxes that were clearly and directly related to the invoiced fuel charges, and determined whether each should be appropriately recovered through the fuel adjustment clause or base rates depending exclusively on their volatility or lack thereof. The Commission then went on to discuss a final category of expenses potentially eligible for recovery through fuel adjustment clauses, which presumably still had to be somewhat "fuel-related" but not necessarily "volatile." This is the Item 10 exception claimed by PEF in this case and the entire paragraph is worth rereading. It states:

> In addition to stipulating to the foregoing applications of policy, the parties also recommended to the Commission that the policy it adopts be flexible enough to allow for recovery through fuel adjustment clauses of expenses normally recovered through base rates when utilities are in a position to take advantage of a cost-effective transaction, the costs of which were not recognized or anticipated in the level of costs used to establish the utility's base rates. One example raised was the cost of an unanticipated short-term lease of a terminal to allow a utility to receive a shipment of low cost oil. The parties suggest that this flexibility is appropriate to encourage utilities to take advantage of short-term opportunities not reasonably anticipated or projected for base rate recovery. In these instances, we will require that the affected utility shall bring the matter before the Commission at the first available fuel adjustment hearing and request cost recovery through the fuel adjustment clause on a case by case basis. The Commission shall rule on the appropriate method of cost recovery based upon the merits of each individual case.

Order No. 14546, at 3. Emphasis supplied. AARP would suggest that the Commission in 1985 intended the following minimum conditions exist for an expense to qualify for an Item 10 exception: (1) the transaction involved must be fuel-related and be "cost-effective," meaning that the resulting benefits would exceed the costs allowed through the fuel clause; (2) it must be "short-term" in duration; and (3) it must not have been, or not been capable of being, "reasonably anticipated or projected for base rate recovery."

First on this point, AARP would urge this Commission to recognize that the single example cited for the Item 10 exception in Order No. 14546 was an "unanticipated short-term lease of a terminal to allow a utility to receive a shipment of low cost oil." Such a described transaction would necessarily involve: (1) a lease payment(s), which is an expense and not a return on a capital investment; (2) would require a demonstration that the oil cost savings exceeded the cost of the terminal lease; (3) would clearly be short-term if for a single shipment of low-cost oil; and (4) would likely be a one-time opportunity clearly not capable of being anticipated for inclusion in a prior base rate case.

Whether or not the five prior cases in which the Commission used Item 10 as a basis for allowing non-volatile costs to be recovered through the fuel adjustment clause strictly met the intention of Order No. 14546, each is clearly distinguishable from the instant request. First, while one might argue whether 5 years, or even 2 years, should be defined as "short-term," the fact that PEF's CR3 project will involve an amortization period of 10 years, at a minimum, clearly distinguishes PEF's request from the five cited exceptions found in Exhibit 28. Additionally, the instant petition is easily distinguishable by virtue of the total dollars being requested. The previous exceptions cited by PEF involved requests of $10 million, $7.5 million, $2.6 million, $2.5 million and $2.45 million. PEF's current request, which is based on projections that may escalate, is in the range of $448 million, or roughly 45 times greater than the largest previous exception of $10 million and 90 times larger than the $5.01 million average of the five cited exceptions. Stated differently, the largest of the five earlier exceptions, Florida Power & Light Company's ("FPL") Turkey Point 3 and 4 projects, cost $10 million or just about $1/45^{th}$ of the $448 million most recently projected for PEF's CR3 Uprate, while the $5.01 million average of all five previous applications represents a mere $1/90^{th}$ of the amount being requested by PEF here.

As clearly provided for in Order No. 14546, petitions seeking fuel clause recovery pursuant to an Item 10 exception should be judged on a case by case basis and on their individual merits. Aside from the fact that PEF's petition is in apparent violation of its 2005 rate stipulation and even though the Utility's mostly future investment in the project can be recovered through base rates, PEF's petition is clearly distinguishable from the five cases cited by PEF as Item 10 precedents by virtue of the huge disparity in the dollar relief being requested,

as well as by the claimed amortization period for the CR3 Uprate project of no less than 10 years. PEF's petition should be denied on this basis alone.

Full recovery for the CR3 project may be had through base rates, but not until the December, 2009 conclusion of the rate stipulation

As testified to by Public Counsel's witnesses and conceded by PEF witness Portuondo, PEF's investment in the CR3 Uprate projects will be reflected in base rates with or without it filing a base rate case seeking their inclusion in new, presumably higher base rates. It is the nature of utility regulation and base rate cases that new capital projects, when placed in service, are included in the utility's rate base. The impact of such an inclusion will depend upon the level of revenues obtained from increased sales and/or resulting from expenses at lower levels than presumed in the last rate case. Earnings may be lower, higher or remain at the level current base rates were set at depending upon these variables. If earnings are legally too low, and there is no stipulation precluding the filing of a new case, as is the case here, then PEF could file a base rate case and seek an increase based on its newer, higher rate base. What appears very clear here is that all the customer parties believe that PEF, by this petition, is seeking to violate its 2005 rate stipulation with them by which it said it would not seek an increase in rates by the inclusion of investments that normally would be the subject of a base rate case.

Conclusion

AARP would respectfully request that the Commission deny PEF's petition because the request is in violation of its 2005 rate stipulation, because the costs of the project, most of which are somewhat distant, may be sought through a base rate case at the end of the rate stipulation, and because the instant request is readily and clearly distinguishable from the five Item 10 exceptions cited by PEF as support for granting it rate relief through the fuel adjustment clause.

ISSUES AND POSITIONS

ISSUE 1: Should the Commission authorize clause recovery in lieu of base rate recovery of the prudent and reasonable costs of the following:

A. Phase 1 of PEF's CR3 Uprate Project?

AARP Position: *No. AARP adopts the position of the Office of Public counsel on this issue.*

B. Phase 2 of PEF's CR3 Uprate Project?

AARP Position: *No. AARP adopts the position of the Office of Public Counsel on this issue.*

C. Phase 3 of PEF's CR3 Uprate Project, including:

1. Nuclear Core Modifications, Secondary Systems, and Other Project-related Plant Additions/Modifications?

AARP Position: *No. AARP adopts the position of the Office of Public Counsel on this issue.*

2. The "point of discharge" cooling solution?

AARP Position: *No. AARP adopts the position of the Office of Public Counsel on this issue.*

3. Transmission upgrades associated with the CR3 Uprate Project?

AARP Position: *No. AARP adopts the position of the Office of Public Counsel on this issue.*

4. Other costs associated with phase 3 of the CR3 Uprate Project?

AARP Position: *No. AARP adopts the position of the Office of Public Counsel on this issue.*

ISSUE 2: **If the Commission authorizes clause recovery of the CR3 Uprate Project, which cost recovery clause, fuel or capacity, is appropriate for capitalized costs attributable to the uprate?**

AARP Position: *No recovery should be authorized by the Commission, but approved revenues, if any, should be recovered through the fuel clause recovery clause since the claimed benefits of the project, namely of fuel savings, will be realized through the fuel clause.*

ISSUE 3: **If the Commission authorizes clause recovery of the CR3 Uprate Project, what capital recovery periods should the Commission prescribe for the assets?**

AARP Position: *AARP adopts the position of the Office of Public Counsel on this issue.*

ISSUE 4: **Based on the recovery periods prescribed for the CR3 Uprate Project assets, what ratemaking adjustments, if any, are necessary?**

AARP Position: *AARP adopts the position of the Office of Public Counsel on this issue.*

ISSUE 5: **If the Commission authorizes PEF clause recovery of the CR3 Uprate Project, what return on investment should the Commission authorize PEF to include?**

AARP Position: *AARP adopts the position of the Office of Public Counsel on this issue.*

ISSUE 6: **If the Commission authorizes clause recovery of the CR3 Uprate Project, how should the costs associated with the project be allocated between wholesale and retail jurisdictions for rate recovery purposes?**

AARP Position: *AARP adopts the position of the Office of Public Counsel on this issue.*

ISSUE 7: **If the Commission authorizes clause recovery of the CR3 Uprate Project, what reports, if any, should PEF be required to file with the Commission?**

AARP Position: *AARP adopts the position of the Office of Public Counsel on this issue.*

ISSUE 8: **Should this docket be closed?**

AARP Position: *AARP adopts the position of the Office of Public Counsel on this issue.*

Respectfully submitted,

/s/ Michael B. Twomey
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On behalf of AARP

CERTIFICATE OF SERVICE

I, HEREBY CERTIFY that a true and correct copy of the foregoing document has been furnished by electronic mail and U.S. Mail on this 28th day of August, 2007, to the following:

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