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 Subject: Filing: Docket 070001-EI

Attachments: PEF Motion to Establish Separate Spin-Off Docket.pdf



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<<PEF Motion to Establish Separate Spin-Off Docket.pdf>> Attached for e-filing and service on behalf of Progress Energy Florida Inc. is Progress Energy Florida, Inc.'s Motion to Establish Separate "Spin-Off" Docket to Examine Certain Coal Purchase Transactions and to Stay Separate Docket Pending Outcome of Motion for Reconsideration [6 pages].

Jeanne Costello  
 Legal Administrative Assistant  
 James Michael Walls/ Dianne M. Triplett  
 Carlton Fields  
 4221 W. Boy Scout Blvd., Ste. 1000  
 Tampa, FL 33607  
 Email: jcostello@carltonfields.com  
 Direct Dial: (813) 229-4917  
 Fax: (813) 229-4133  
 www.carltonfields.com

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**BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION**

In re: Fuel and Purchased Power Cost  
Recovery Clause and Generating  
Performance Incentive Factor

DOCKET NO.: 070001-EI

Filed: October 4, 2007

**PROGRESS ENERGY FLORIDA, INC.'S MOTION TO ESTABLISH  
SEPARATE "SPIN-OFF" DOCKET TO EXAMINE  
CERTAIN COAL PURCHASE TRANSACTIONS AND TO STAY SEPARATE  
DOCKET PENDING OUTCOME OF MOTION FOR RECONSIDERATION**

Progress Energy Florida ("PEF" or the "Company"), moves to establish a separate "spin-off" docket to evaluate the prudence and reasonableness of certain coal purchases made by PEF for the years 2006 and 2007, and to stay this separate spin-off docket pending the outcome of a motion for reconsideration. In support of this motion, PEF states:

1. In this proceeding, the Commission has scheduled a hearing for November 6, 2007 to consider the electric utilities' pending petitions for approval of their fuel clause cost recovery true-up amounts for the period January 2007 through December 2007, as well as approval of their fuel clause recovery factors. The utilities filed testimony addressing true-up amounts on August 3, 2007. The current schedule requires intervenors to submit testimony for the November hearing no later than October 1, 2007.

2. Also at issue in this proceeding is whether PEF was prudent in its coal purchases for CR4 and CR5 for the years 2006 and 2007. This additional specific issue was identified in the staff recommendation for Docket Number 060658-EI, which was issued on July 18, 2007 and ultimately approved by a majority of the Commissioners, by oral vote, at an agenda hearing on July 31, 2007. Docket Number 060658-EI addressed, among other things, the prudence of PEF's

coal purchases for CR4 and CR5 for the time period 1996-2005. Specifically, the staff recommendation for that docket advised that “the Commission should direct PEF to supplement its 2006 Final True-Up Testimony in Docket No. 070001-EI to address whether the Company was prudent in its 2006 and 2007 coal purchases for CR4 and CR5.”

3. The final written order regarding Docket Number 060658-EI has not yet been issued. It is thus unclear whether the final order will provide for a directive to PEF regarding the filing of testimony in Docket Number 070001-EI for its 2006 and 2007 CR4 and CR5 coal purchases. Indeed, because there has been no final order, PEF has not yet filed any direct testimony regarding its 2006 and 2007 coal purchases for CR4 and CR5.

4. Despite the fact that PEF has not submitted any testimony on this issue, on October 1, 2007, the Office of Public Counsel (“OPC”) filed a confidential copy of the testimony of Robert L. Sansom in support of its position regarding PEF’s 2006 and 2007 coal purchases for CR4 and CR5. This testimony, which is 31 pages, highlights the complex nature of the issues regarding these coal purchases.

5. As is frequently the case when significant and complicated factual issues arise in the ongoing fuel cost recovery proceeding, the schedule in Docket Number 070001-EI simply does not afford PEF an adequate opportunity to develop relevant facts and, if warranted, prepare testimony. In fact, because the final order from Docket Number 060658-EI has not been issued, it is not even clear whether such testimony will be necessary. In any event, given that the final order has not been issued, and the hearing in Docket Number 070001-EI is scheduled in just over a month, there will not be an adequate opportunity to fully develop this issue before the November hearing.

6. On numerous occasions in the past, the Commission has recognized the limited ability of the fuel cost recovery docket to accommodate, within its compressed schedule, issues that require significant fact-finding and analysis. In those instances, it has "spun-off" contentious matters into separate dockets. Indeed, Docket Number 060658-EI was "spun off" from the fuel clause proceeding in 2006. To afford due process to PEF and other interested parties, as well as to position itself to make an informed decision on the matter, PEF respectfully requests that the Commission likewise establish a separate procedural docket in which to examine and consider the issue of the prudence of PEF's coal purchases in 2006 and 2007.

7. In the testimony of Mr. Sansom, filed by OPC in Docket Number 070001-EI, Mr. Sansom also indicates that he is informed of OPC's intent to file a motion for reconsideration in Docket Number 060658-EI. Specifically, Mr. Sansom references two different grounds upon which OPC plans to move for reconsideration. The first ground relates to OPC's feeling that the 20% PRB blend, which Staff found should be applied to barge coal, should be applied to all coal burned at CR 4 and 5 (see pages 5-6 of Sansom testimony). The second ground regards the percentage of coal blend PEF should have been burning at CR4 and CR5. OPC plans to ask for a 30% PRB blend compared to the 20% blend contained in the current primary staff recommendation (see page 7 of Sansom testimony).

8. If OPC files this motion for reconsideration, not only will the order in Docket Number 060658-EI not be finalized until well after the November fuel clause hearing, but the nature and scope of the issues regarding PEF's 2006 and 2007 coal purchases may also change depending on the outcome of the motion for reconsideration. The Commission has previously noted that it has discretion to stay a proceeding, particularly while another action is pending. See In re: Petition by Progress Energy Florida, Inc. to Recovery Costs of Crystal River Unit 3 Uprate

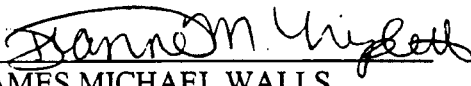
through Fuel Clause, Order No. PSC-07-0334-PCO-EI (Apr. 17, 2007) (citing Florida case law that a motion to stay is properly granted where it will avoid wasting the court's time). If the final order in Docket Number 060658-EI changes, the issues for determination in the spin-off docket will be affected. It will waste the Commission's time to consider PEF's coal purchases for 2006 and 2007 when Docket Number 060658-EI has not been finalized. Accordingly, the new separate docket to consider the 2006 and 2007 coal purchases should be stayed until any pending motion for reconsideration of the order in Docket Number 060658-EI has been resolved.

9. PEF attempted to confer with counsel for OPC regarding OPC's position on this motion, but was unable to obtain OPC's position. PEF will continue to attempt to confer with OPC and will file a separate notice indicating OPC's position on this motion.

WHEREFORE, PEF requests the Commission to grant this Motion, establish a separate docket in which to examine the issues identified herein, and stay that separate docket until the resolution of any pending motion for reconsideration of the final order in Docket Number 060658-EI.

Respectfully submitted this 4<sup>th</sup> day of October, 2007.

R. ALEXANDER GLENN  
JOHN BURNETT  
PROGRESS ENERGY SERVICE  
COMPANY, LLC  
P.O. Box 14042  
St. Petersburg, Florida 33733  
Telephone: (727) 820-5180  
Facsimile: (727) 820-5519

  
JAMES MICHAEL WALLS  
Florida Bar No. 706272  
DIANNE M. TRIPLETT  
Florida Bar No. 0872431  
CARLTON FIELDS, P.A.  
Post Office Box 3239  
Tampa, FL 33601  
Telephone: (813) 223-7000  
Telecopier: (813) 229-4133

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of foregoing Notice of Service has been furnished by electronic mail and U.S. Mail on this 4<sup>th</sup> day of October, 2007 to all counsel as listed on the attached service list.

Jonathan M. Triplett  
Attorney

**DOCKET NO. 070001-EI**  
**COUNSEL OF RECORD AND INTERESTED PARTIES**

Joseph A. McGlothlin  
Charles J. Beck  
Office of the Public Counsel  
c/o The Florida Legislature  
111 West Madison Street, Room 812  
Tallahassee, FL 32399-1400

Lee L. Willis  
James D. Beasley  
Ausley & McMullen  
Post Office Box 391  
Tallahassee, FL 32302

John W. McWhirter, Jr.  
c/o McWhirter Law Firm  
400 North Tampa Street, Ste. 2450  
Tampa, FL 33602

John T. Butler  
Wade Litchfield  
Florida Power & Light Company  
700 Universe Blvd  
Juno Beach, FL 33408-0420

Ms. Susan D. Ritenour  
Gulf Power Company  
One Energy Place  
Pensacola, FL 32520-0780

James W. Brew  
c/o Brickfield Law Firm  
1025 Thomas Jefferson St., NW  
Eighth Floor, West Tower  
Washington, D.C. 20007

Keino Young  
Lisa Bennett  
Office of General Counsel  
Florida Public Service Commission  
2540 Shumard Oak Blvd.  
Tallahassee, FL 32399-0850

Jeffrey Stone  
Beggs & Lane Law Firm  
Post Office Box 12950  
Pensacola, FL 32591

Mr. Bill Walker  
Florida Power & Light Company  
215 South Monroe Street, Ste. 810  
Tallahassee, FL 32301-1859

Ms. Cheryl Martin  
Florida Public Utilities Company  
P.O. Box 3395  
West Palm Beach, FL 33402-3395

Norman H. Horton, Jr.  
Messer Law Firm  
Post Office Box 15579  
Tallahassee, FL 32317

Paula K. Brown  
Administrator, Regulatory Coordination  
P.O. Box 111  
Tampa, FL 33601-0111