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090079-EI

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 Subject: Attorney General's Prehearing Statement - Dkt No. 090079
 Attachments: Attorney General's Prehearing Statement 090709.doc



Attorney
General's Prehearir

Attached is the Attorney General's Prehearing Statement for filing in Docket No. 090079. Thank you for your consideration of this matter.

(See attached file: Attorney General's Prehearing Statement 090709.doc)

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FPSC-COMMISSION CLERK

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

Petition for increase in rates by)
Progress Energy Florida, Inc.)
_____)

Docket No.090079-EI

Filed: September 1, 2009

ATTORNEY GENERAL'S PREHEARING STATEMENT

The Attorney General, pursuant to the Order Establishing Procedure in this docket, Order No. PSC-09-0190-PCO-EI, issued March 27, 2009, hereby submits this Prehearing Statement.

APPEARANCES:

Cecilia Bradley
Senior Assistant Attorney General

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1. WITNESSES:

We will present no witnesses but reserve the right to cross-examine the witnesses of other parties.

2. EXHIBITS:

We will not introduce any new exhibits but reserve the right to use the exhibits of other parties as well as the exhibits from the public hearings.

3. STATEMENT OF BASIC POSITION

As noted by the Public Counsel, the rate request from Progress Energy Florida, Inc. ("Progress") is excessive. In particular, the rate request by Progress does not provide a fair and reasonable rate for the citizens and small businesses of Florida in the current economic climate. Numerous citizens and small business owners sat for hours at the public hearings and testified that they are struggling and simply cannot afford an increase in their electric rates.

These customers testified about the sacrifices they have made to decrease their electrical usage and how their electric bills have continued to go up despite these sacrifices. A number of the customers testified that they would like to take advantage of the programs to purchase more

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energy-efficient appliances or make energy-saving repairs but could not afford to do so.

Many of these customers talked about being on fixed incomes and having their Social Security payments frozen for the next two years while their expenses for medications and other goods and services continue to rise. Some of these customers talked about cutting back on their food choices or other expenses because they had to use oxygen or other medical devices requiring electricity. Other customers talked about only taking their prescribed medications every other day or not taking some medications at all so that they could pay their electric bills. Many of the seniors testified about having been raised to live within their means but that their means would no longer cover the necessities. These seniors are now afraid they will have to move in with family or relocate to another state with more affordable electric rates.

Some business owners also testified about the trickle-down effect the requested increase would have on their customers and businesses. Some testified their businesses had absorbed some of the recent increasing costs but that they couldn't afford to do so if this increase was granted. These business owners testified that they feared their customers would no longer be able to afford their goods and services, forcing them to lay off more staff or close their businesses.

The customers who testified ranged in age from 10 to 90, but they were consistent in their opposition to the rate increase and the serious consequences of such an action by this Commission. Although some customers were complimentary of the service they received from Progress, many others complained about the service responsiveness, the numerous power surges, and the intermittent power outages during sunny days. This customer testimony clearly shows that the rate increase requested by Progress will not provide a fair and reasonable rate for its customers during this tough economic time and accordingly should be denied.

4. STATEMENT OF FACTUAL ISSUES AND POSITIONS

ISSUE 1: Is the rate increase, requested by Progress Energy Florida, Inc., a just and reasonable rate for its customers and is it in the public interest? (AG)

AG: No. As detailed above, this rate increase is not in the public interest at this time and will not provide fair and reasonable rates for Progress customers.

TEST PERIOD AND FORECASTING

ISSUE 2: Is PEF's projected test period of the twelve months ending December 31, 2010 appropriate? (Staff, OPC #2)

AG: We do not contest this issue.

ISSUE 3: What are the appropriate inflation, customer growth, and other trend factors for use in forecasting? (OPC)

AG: **No position at this time.**

ISSUE 4: Are PEF's forecasts of customer growth, KWH by revenue class, and system KW for the projected test year appropriate? **(Staff)**

AG: **No position at this time.**

ISSUE 5: Are PEF's forecasts of billing determinants by rate class for the projected test year appropriate? **(Staff)**

AG: **No position at this time.**

QUALITY OF SERVICE

ISSUE 6: Is the quality and reliability of electric service provided by PEF adequate? **(Staff, OPC 6)**

AG: **No position pending receipt of all customer testimony.**

DEPRECIATION STUDY

ISSUE 7: Should the current-approved depreciation rates, capital recovery schedules, and amortization schedules be revised? **(Staff, OPC 7)**

AG: **Yes, as specified by OPC's expert witness, Jacob Pous.**

ISSUE 8: What are the appropriate capital recovery schedules? **(Staff, OPC #8)**

AG: **Support OPC's position.**

ISSUE 9: Is PEF's calculation of the average remaining life appropriate?

AG: **No.**

ISSUE 10: What are the appropriate depreciation parameters (remaining life, net salvage percent, and reserve percent), amortizations, and resulting rates for each

production unit, including but not limited to coal, steam, combined cycle, etc.?
(OPC #s 8, 9, 10, 11, 12, 14, 16, 20, and FIPUG #s 8, 9)

AG: Support OPC's position.

ISSUE 11: What life spans should be used for PEF's coal plants?(OPC, FIPUG #8)

AG: Support OPC's position.

ISSUE 12: What life spans should be used for PEF's combined cycle plants? (OPC, FIPUG #9)

AG: Support OPC's position.

ISSUE 13: What are the appropriate depreciation parameters (remaining life, net salvage percent, and reserve percent), amortizations, and resulting rates for each transmission, distribution, and general plant account? (Staff, OPC #8, 11, 18, 19, 20)

AG: Support OPC's position.

ISSUE 14: Based on the application of the depreciation parameters that the Commission has deemed appropriate to PEF's data, and a comparison of the calculated theoretical reserves to the book reserves, what are the resulting differences? (Staff)

AG: Support OPC's position.

ISSUE 15: What, if any, corrective reserve measures should be taken with respect to the differences identified in the Issue 14?

AG: Excess depreciation should be refunded to the customers who paid for the excess.

ISSUE 16: What should be the implementation date for revised depreciation rates, capital recovery schedules, and amortization schedules? (Staff, OPC #27)

AG: January 1, 2010.

FOSSIL DISMANTLEMENT COST STUDY

ISSUE 17: Should the current-approved annual dismantlement provision be revised? (Staff, OPC #28)

AG: Yes.

ISSUE 18: What, if any, corrective reserve measures should be approved? (Staff, OPC # 29)

AG: Support OPC's position.

ISSUE 19: What is the appropriate annual provision for dismantlement? (Staff, OPC #30)

AG: No position at this time.

ISSUE 20: Are PEF's assumptions in the fossil dismantlement study with regard to site restoration reasonable? (formerly OPC 31)

AG: No.

ISSUE 21: In future dismantlement studies filed with the Commission, should PEF consider alternative demolition approaches? (OPC #32)

AG: Support OPC's position.

NUCLEAR DECOMMISSIONING COST STUDY

ISSUE 22: Should the currently approved annual nuclear decommissioning accruals be revised? (Staff)

AG: No position at this time.

ISSUE 23: What is the appropriate annual decommissioning accrual in equal dollar amounts necessary to recover future decommissioning costs over the remaining life Crystal River Unit 3 (CR3)? **(Staff)**

AG: No position at this time.

RATE BASE

ISSUE 24: Has the company removed all non-utility activities from rate base? **(Staff, OPC #33)**

AG: No.

ISSUE 25: Should any adjustments be made to rate base related to the Bartow Repowering Project?

AG: No position at this time.

ISSUE 26: Should an adjustment be made to reflect any test year or post test year revenue requirement impacts of "The American Recovery and Reinvestment Act" signed into law by the President on February 17, 2009? **(OPC)**

AG: No position at this time.

ISSUE 27: Is PEF's requested level of Plant in Service for the projected 2010 test year appropriate? **(Staff)**

AG: No.

ISSUE 28: What adjustments, if any, should be made to accumulated depreciation to reflect revised depreciation rates, capital recovery schedules, and amortization schedules resulting from PEF's depreciation study? **(Staff)**

AG: **Accumulated depreciation should be reduced.**

ISSUE 29: Is PEF's requested level of Accumulated Depreciation and Amortization in the amount of \$4,437,117,000 for the 2010 projected test year appropriate? **(Staff)**

AG: No.

ISSUE 30: Is PEF's requested level of CWIP – No AFUDC in the amount of \$151,145,000 for the projected 2010 test year appropriate? **(Staff)**

AG: **No position at this time.**

ISSUE 31: Is PEF's requested level of Plant Held for Future Use in the amount of \$25,723,000 for the projected 2010 test year appropriate? **(Staff)**

AG: No.

ISSUE 32: Is PEF's requested level of Nuclear Fuel – No AFUDC (net) in the amount of \$126,566,000 for the projected 2010 test year appropriate? **(Staff)**

AG: **No position at this time.**

ISSUE 33: Should an adjustment be made to PEF's requested storm damage reserve, annual accrual of \$14.9 million, and target level of \$150 million? **(OPC 83)**

AG: Yes.

ISSUE 34: Should any adjustments be made to PEF's fuel inventories? **(Staff, OPC #42)**

AG: No position at this time.

ISSUE 35: Should unamortized rate case expense be included in Working Capital? (**Staff**)

AG: No.

ISSUE 36: Has PEF appropriately reflected the impact of SFAS 143 (Asset Retirement Obligations) in its proposed working capital calculation? (**OPC**)

AG: Support OPC's position.

ISSUE 37: Is PEF's requested level of Working Capital Allowance in the amount of (\$9,041,000) for the projected test year appropriate? (**Staff**)

AG: No.

ISSUE 38: Is PEF's requested level of Rate Base in the amount of \$6,238,617,000 for the 2010 projected test year appropriate? (**Staff**)

AG: No.

COST OF CAPITAL

ISSUE 39: What is the appropriate amount of accumulated deferred taxes to include in the capital structure for the projected test year? (**Staff, OPC #48**)

AG: Support OPC's position.

ISSUE 40: What is the appropriate amount and cost rate of the unamortized investment tax credits to include in the capital structure for the projected test year? (**Staff, OPC #49**)

AG: Support OPC's position.

ISSUE 41: Should PEF's requested pro forma adjustment to equity to offset off-balance sheet purchased power obligations be approved? (Staff)

AG: No.

ISSUE 42: What is the appropriate equity ratio that should be used for PEF for purposes of setting rates in this proceeding? (Staff, OPC #53)

AG: Support OPC's position.

ISSUE 43: Have rate base and capital structure been reconciled appropriately? (Staff, OPC #52)

AG: No position at this time.

ISSUE 44: What is the appropriate capital structure for the projected test year? (Staff)

AG: Support OPC's position.

ISSUE 45: What is the appropriate cost rate for short-term debt for the projected test year? (Staff, OPC #50)

OPC: 3.06% (Woolridge).

ISSUE 46: What is the appropriate cost rate for long-term debt for the projected test year? (Staff, OPC #51)

AG: Support OPC's position.

ISSUE 47: What is the appropriate return on equity (ROE) for the projected test year? (Staff)

AG: Support OPC's position.

ISSUE 48: What is the appropriate weighted average cost of capital including the proper components, amounts, and cost rates associated with the projected capital structure? **(Staff)**

AG: Support OPC's position.

NET OPERATING INCOME

ISSUE 49: Is PEF's projected level of total operating revenues in the amount of \$1,517,918,000 for the 2010 projected test year appropriate? **(Staff)**

AG: Support OPC's position.

ISSUE 50: What are the appropriate adjustments to reflect the base rate increase for the Bartow Repowering Project authorized in Order No. PSC-09-0415-PAA-EI? **(Staff)**

AG: No position at this time.

ISSUE 51: Has PEF made the appropriate test year adjustments to remove conservation revenues and expenses recoverable through the Conservation Cost Recovery Clause? **(Staff)**

AG: No position at this time.

ISSUE 52: Has PEF made the appropriate test year adjustments to remove fuel and purchased power revenues and expenses recoverable through the Fuel and Purchased Power Cost Recovery Clause? **(Staff)**

AG: No position at this time.

ISSUE 53: Has PEF made the appropriate test year adjustments to remove capacity revenues and expenses recoverable through the Capacity Cost Recovery Clause? **(Staff)**

AG: No position at this time.

ISSUE 54: Has PEF made the appropriate test year adjustments to remove environmental revenues and expenses recoverable through the Environmental Cost Recovery Clause? **(Staff)**

AG: No position at this time.

ISSUE 55: Has PEF made the appropriate adjustments to remove charitable contributions? **(OPC)**

AG: No position at this time.

ISSUE 56: Has PEF made the appropriate adjustments to remove Aviation costs for the test year? **(OPC)**

AG: No position at this time.

ISSUE 57: Should an adjustment be made to advertising expenses? **(OPC)**

AG: No position at this time.

ISSUE 58: Has PEF made the appropriate adjustments to remove lobbying expenses? **(OPC)**

AG: No position at this time.

ISSUE 59: Is PEF's proposed allowance of \$2,412,100 for directors and officers liability insurance appropriate? **(OPC)**

AG: No.

ISSUE 60: Is PEF's proposed allowance of \$3,669,000 for 2010 injuries and damages expense appropriate? **(OPC)**

AG: No.

ISSUE 61: Is PEF's proposed allowance of \$23,228,000 for 2010 A&G office supplies and expenses appropriate? **(OPC)**

AG: No.

ISSUE 62: Should an adjustment be made to PEF's proposed 2010 allowance for O&M expense to reflect productivity improvements, if any? **(OPC)**

AG: Yes.

ISSUE 63: Should an adjustment be made to PEF's requested level of salaries and employee benefits for the 2010 projected test year? **(Staff)**

AG: Yes.

ISSUE 64: Are PEF's proposed increases to average salaries for 2010 appropriate? **(OPC)**

AG: Not in light of the current economic climate.

ISSUE 65: Are PEF's proposed increases in employee positions for 2010 appropriate? **(OPC)**

AG: No.

ISSUE 66: Should the proposed 2010 allowance for incentive compensation be adjusted? **(OPC)**

AG: Yes. This does not provide any benefit for the customers and is inappropriate in this economic climate.

ISSUE 67: Should the Company's proposed 2010 allowance for employee benefit expense be adjusted? **(OPC)**

AG: Yes.

ISSUE 68: Should an adjustment be made to the accrual for property damage for the 2010 projected test year? **(Staff)**

AG: **No position at this time.**

ISSUE 69: Should an adjustment be made to PEF's 2010 generation O&M expense?

AG: **Yes.**

ISSUE 70: Should an adjustment be made to PEF's 2010 transmission O&M expense?

AG: **Yes.**

ISSUE 71: Should an adjustment be made to PEF's 2010 distribution O&M expense?

AG: **Yes.**

ISSUE 72: Should an adjustment be made to Operating and Maintenance (O&M) expenses to normalize the number of outages PEF has projected for the 2010 projected test year? **(Staff)**

AG: **No position at this time.**

ISSUE 73: What is the appropriate amount and amortization period for PEF's rate case expense for the 2010 projected test year? **(Staff)**

AG: **Support OPC's position.**

ISSUE 74: Should an adjustment be made to bad debt expense for the 2010 projected test year? **(Staff)**

AG: **No position at this time.**

ISSUE 75: What adjustments, if any, should be made to the 2010 projected test year depreciation expense to reflect revised depreciation rates, capital recovery schedules, and amortization schedules resulting from PEF's depreciation study? **(Staff)**

AG: **Support OPC's position.**

ISSUE 76: What is the appropriate amount of depreciation and fossil dismantlement expense for the 2010 projected test year? **(Staff)**

AG: **Support OPC's position.**

ISSUE 77: What is the appropriate amount of nuclear decommissioning expense for the 2010 projected test year? **(Staff)**

AG: **No position at this time.**

ISSUE 78: What adjustments, if any, should be made to the amortization of End of Life Material and Supplies inventories? **(Staff)**

AG: **No position at this time.**

ISSUE 79: What adjustments, if any, should be made to the amortization of the costs associated with the last core of nuclear fuel? **(Staff)**

AG: **No position at this time.**

ISSUE 80: Should an adjustment be made to taxes other than income taxes for the 2010 projected test year? **(Staff OPC #96)**

AG: **No position at this time.**

ISSUE 81: Is it appropriate to make a parent debt adjustment as per Rule 25-14.004, Florida Administrative Code? **(Staff)**

AG: Yes.

ISSUE 82: Should an adjustment be made to Income Tax expense for the 2010 projected test year? **(Staff)**

AG: Support OPC's position.

ISSUE 83: Is PEF's requested level of O&M expense in the amount of \$713,371,000 for the 2010 projected test year appropriate? **(Staff)**

AG: No.

ISSUE 84: Is PEF's projected net operating income in the amount of \$268,546,000 for the 2010 projected test year appropriate? **(Staff)**

AG: No.

ISSUE 85: Has PEF appropriately accounted for affiliated transactions? If not, what adjustment, if any, should be made? **(OPC)**

AG: No. Support OPC's position.

REVENUE REQUIREMENTS

ISSUE 86: What is the appropriate projected test year revenue expansion factor and the appropriate net operating income multiplier, including the appropriate elements and rates for PEF? **(Staff)**

AG: No position at this time.

ISSUE 87: Is PEF's requested annual operating revenue increase of \$499,997,000 for the 2010 projected test year appropriate? **(Staff)**

AG: No.

COST OF SERVICE AND RATE DESIGN

ISSUE 88: Has PEF correctly calculated revenues at current rates for the projected test year? **(Staff)**

AG: No position.

ISSUE 89: Is PEF's proposed separation of costs and revenues between the wholesale and retail jurisdictions appropriate? **(Staff)**

AG: No position.

ISSUE 90: What is the appropriate Cost of Service Methodology to be used to allocate base rate and cost recovery costs to the rate classes?

AG: No position.

ISSUE 91: If the Commission approves a cost allocation methodology other than the 12 CP and 1/13th Average Demand, should all cost recovery factors be adjusted to reflect the new cost of service methodology? **(Staff)**

AG: No position.

ISSUE 92: How should any change in revenue requirements approved by the Commission be allocated among the customer classes? **(Staff)**

AG: No position.

ISSUE 93: Is PEF's proposed treatment of unbilled revenue due to any recommended rate change appropriate? **(Staff)**

AG: **No position.**

ISSUE 94: Is PEF's proposed charge for Investigation of Unauthorized Use appropriate?
(Staff)

AG: **No position.**

ISSUE 95: Should the Commission approve PEF's proposal to eliminate its IS-1, IST-1, CS-1, and CST-1 rate schedules and transfer the current customers to otherwise applicable rate schedules? **(Staff)**

AG: **No position.**

ISSUE 96: Is PEF's proposal to grandfather certain terms and conditions for existing IS-1, IST-1, CS-1, and CST-1 customers under the combined IS and CS rate schedules appropriate? **(Staff)**

AG: **No position.**

ISSUE 97: Should PEF's proposal to close the RST-1 rate to new customers be approved?
(Staff)

AG: **No position.**

ISSUE 98: Are PEF's proposed customer charges appropriate? **(Staff)**

AG: **No.**

ISSUE 99: Are PEF's proposed service charges appropriate? **(Staff)**

AG: **No.**

ISSUE 100: Is PEF's proposed charge for Temporary Service appropriate? **(Staff)**

AG: No.

ISSUE 101: Is PEF's proposed Premium Distribution Service charge appropriate? **(Staff)**

AG: No position.

ISSUE 102: Are PEF's proposed tariffed LS-1 lighting rate schedule charges for standard equipment appropriate? **(Staff)**

AG: No position.

ISSUE 103: Are PEF's proposed monthly fixed charge carrying rates to be applied to the installed cost of customer-requested distribution equipment, lighting service fixtures, and lighting service poles, for which there are no tariffed charges, appropriate? **(Staff)**

AG: No position.

ISSUE 104: Are PEF's proposed delivery voltage credits appropriate? **(Staff)**

OAG: No position.

ISSUE 105: Are PEF's power factor charges and credits appropriate? **(Staff)**

AG: No position.

ISSUE 106: Is PEF's proposed lump sum payment for time-of-use metering costs appropriate? **(Staff)**

AG: No position.

ISSUE 107: What is the appropriate method of designing time of use rates for PEF? (AFFIRM Issue)

AG: No position.

ISSUE 108: What are the appropriate charges under the Firm, Interruptible, and Curtailable Standby Service rate schedules? (Staff)

AG: No position.

ISSUE 109: What is the appropriate level of the interruptible credit? (FIPUG)

AG: No position.

ISSUE 110: Should the interruptible credit be load factor adjusted? (FIPUG)

AG: No position.

ISSUE 111: What are the appropriate energy charges? (Staff, FIPUG #17)

AG: No position.

ISSUE 112: What are the appropriate demand charges? (Staff, FIPUG #18)

AG: No position.

ISSUE 113: What are the appropriate lighting charges? (Staff)

AG: No position.

ISSUE 114: Should PEF's proposal to revise its Leave Service Active (LSA) provision (tariff sheet No. 6.110) be approved? (Staff)

AG: No position.

ISSUE 115: What is the appropriate effective date for PEF's revised rates and charges? (Staff, OPC #103)

AG: No position.

OTHER ISSUES

ISSUE 116: Should any of the \$13,078,000 interim rate increase granted by Order No. PSC-09-0413-PCO-EI be refunded to the ratepayers? (Staff)

AG: Yes. The interim rate monies should be refunded with interest as determined by Commission rule.

ISSUE 117: Should PEF be required to file, within 90 days after the date of the final order in this docket, a description of all entries or adjustments to its annual report, earnings surveillance reports, and books and records which will be required as a result of the Commission's findings in this docket [OPC – rate case instead of docket]? (Staff, OPC #104)

AG: Yes.

ISSUE 118: What are the appropriate guidelines for the pension fund regulatory asset? (FIPUG)

AG: No position at this time.

ISSUE 119: Does the creation of a regulatory asset and the deferral of pension expenses from a period covered by the Stipulation approved by Order No. PSC-05-0945-S-EI to a future period violate the terms of the Stipulation and order?

AG: Yes.

ISSUE 120: Does the creation of a regulatory asset and the deferral of pension expenses from a period covered by the Stipulation and order to a future period constitute retroactive ratemaking?

AG: Yes.

ISSUE 121: Does the creation of a regulatory asset and the deferral of pension expenses from a period covered by the revenue sharing provisions of the Stipulation and order to a future period result in double recovery of those expenses?

OAG: Yes.

ISSUE 122: Should this docket be closed? (Staff, OPC #105)

AG: No position at this time.

5. **STIPULATED ISSUES:**

None.

6. **PENDING MOTIONS:**

We will be filing a motion in *limine* regarding any late-filed exhibits. This motion will be consistent with the one filed by our office in the FP&L case.

7. **STATEMENT OF PARTY'S PENDING REQUESTS OR CLAIMS FOR CONFIDENTIALITY:**

None.

8. **OBJECTIONS TO QUALIFICATION OF WITNESSES AS AN EXPERT:**

None at this time for those presenting expert opinions.

9. **STATEMENT OF COMPLIANCE WITH ORDER ESTABLISHING PROCEDURE:**

There are no requirements of the Order Establishing Procedure with which we cannot comply apart from the requested one-day extension for the filing of this document.

Respectfully submitted,

BILL McCOLLUM

Attorney General

s/ Cecilia Bradley

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CERTIFICATE OF SERVICE
DOCKET NO. 090079-EI

I HEREBY CERTIFY that a copy of the foregoing **ATTORNEY GENERAL'S PREHEARING STATEMENT** has been furnished by electronic mail on the 1st day of September 2009, to the following:.

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