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 Attachments: Docket 090079 mtn reg asset.pdf



Docket 090079  
tn reg asset.pdf.

Docket No. 090079  
In re: Petition for increase in rates by Progress Energy Florida, Inc.

1. This filing is made by

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2. This filing is Progress Energy Florida, Inc.'s Motion for Expedited Approval of a Regulatory Asset or Liability as an Alternative to Implementing Rates Subject to Refund Pursuant to Section 366.06(3), Florida Statutes.

3. This document is ten (10) pages.

4. This filing is made on behalf of Progress Energy Florida, Inc.

DOCUMENT NUMBER-DATE  
11056 NOV-28  
FPSC-COMMISSION CLERK

**BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION**

In re: Petition for increase in rates  
By Progress Energy Florida, Inc.,  
\_\_\_\_\_ /

Docket No. 090079-EI

**PROGRESS ENERGY FLORIDA, INC.'S MOTION FOR EXPEDITED  
APPROVAL OF A REGULATORY ASSET OR LIABILITY AS AN ALTERNATIVE TO  
IMPLEMENTING RATES SUBJECT TO REFUND PURSUANT TO SECTION  
366.06(3), FLORIDA STATUTES**

Progress Energy Florida, Inc. ("PEF" or the "Company"), pursuant to Section 366.05(1), Florida Statutes, and Rule 28-106.204, F.A.C., respectfully moves the Florida Public Service Commission ("PSC" or the "Commission"), for approval of the creation of a regulatory asset or liability as an alternative to the implementation of rates subject to refund commencing with the first billing cycle for January 2010 pursuant to the Company's Petition in this Docket and Section 366.06(3), Florida Statutes. PEF requests expedited approval of its Motion for the reasons provided in this Motion.

**BACKGROUND**

1. On March 20, 2009, PEF filed its Petition for a permanent increase in base rates and service charges sufficient to generate additional, total annual base revenues of approximately \$499 million, beginning with the first billing cycle for January 2010, pursuant to the file and suspend provisions of Section 366.06(3), Florida Statutes. PEF filed Minimum Filing Requirements ("MFRs"), pre-filed direct witness testimony, exhibits, and appropriate tariff sheets associated with the request for permanent base rate relief.

2. By Order No. PSC-09-0413-PCO-EI in this Docket, the Commission, in relevant part, suspended PEF's proposed final rates pursuant to Section 366.06(3) pending further review of PEF's base rate relief request. Specifically, the Commission suspended the requested permanent base rate schedules under the provision of Section 366.06(3) that provides, pending a

final order by the Commission in any rate proceeding under this section, the Commission may for good cause withhold consent to the operation of all or any portion of the new rate schedules within 60 days of the request. §366.06(3), Fla. Stats. The Florida Legislature further provided in Section 366.06(3) that “[s]uch consent shall not be withheld for a period longer than 8 months from the date of filing the new schedules.” *Id.* Absent a final decision on the base rate relief petition pursuant to the *file and suspend provisions of Section 366.06(3) within 8 months*, the Florida Legislature provided that “[t]he new rates or any portion not consented to shall go into effect under bond or corporate undertaking at the end of” the eight-month period. *Id.* Consistent with these statutory provisions, the Commission entered an Order of Procedure in this Docket, Order No. PSC-09-0190-PCO-EI, that provided for service hearings, discovery, intervener testimony and exhibits, rebuttal testimony and exhibits, a final evidentiary hearing, and briefs, in time for a final Commission decision within the eight-month statutory period.

3. PEF’s base rate proceeding, through the final evidentiary hearing and briefing, was completed within the schedule set forth in the Commission’s Order of Procedure. The Commission Staff recommendation was due November 10, 2009 for the Commission’s consideration at the Special Agenda Conference on November 19, 2009. On October 2, 2009, however, Governor Crist requested that the Commission postpone its decision until two newly appointed Commissioners are confirmed. Commission Staff’s recommendation regarding the Governor’s request was set for consideration at the October 27, 2009 Agenda Conference. All parties were provided the opportunity to brief certain issues related to the Governor’s request, including, with respect to PEF, whether the Commission can postpone its final decision on PEF’s petition for a permanent base rate increase and, if the Commission did postpone its decision, whether PEF can begin charging rates subject to refund on January 1, 2010.

4. All intervener parties and the Commission Staff agreed that PEF may begin charging rates subject to refund on January 1, 2010. They acknowledged that PEF's 2005 Base Rate Settlement Agreement terminates with the last billing cycle of December 2009 and that the file and suspend provisions of Section 366.06(3) control.

5. The Commission denied Commission Staff's Recommendation that it cannot postpone a final decision on PEF's base rate petition and timely comply with the statutory obligation to render a final decision on or before March 20, 2009. The Commission approved alternative dates for a decision on PEF's revenue requirements on January 11, 2010 and PEF's rates on January 28, 2010. As a result of this decision to postpone its decision on PEF's revenue requirements and rates, and its acknowledgement that PEF by statute may begin charging the requested rates on January 1, 2010 subject to refund, the Commission asked PEF "to do their best to minimize any potential impact to ratepayers." Pursuant to this request, PEF moves the Commission to approve a regulatory asset or liability as an alternative to the immediate collection on January 1, 2009 of PEF's requested rates subject to refund as authorized by Section 366.06.(3).

**I. The Commission should grant PEF's request to create a regulatory asset or liability as an alternative to PEF's implementation of rates subject to refund pursuant to Section 366.06(3).**

6. Section 366.06(3) states that the Company is entitled to place its proposed new rates into effect subject to refund after eight months. The 8-month statutory clock runs on November 19, 2009, and PEF's 2005 Rate Settlement Agreement expires with the last billing cycle of December 2009, unless extended by PEF at its sole option for another 6-month period, which PEF did not do. No party disputes this and, therefore, PEF is entitled to place its proposed rates into effect subject to refund with the first billing cycle of January 2010. As an alternative

in response to the Commission's specific request that PEF attempt to minimize any potential impact to ratepayers, PEF moves the Commission to approve a regulatory asset or liability that adjusts actual revenues earned by PEF in 2010 to the revenue requirements approved by the Commission, until new rates are implemented following the Commission's current schedule to decide PEF's revenue requirements and rates.

7. Granting this Motion and creating the requested regulatory asset or liability complies with the Commission's request by protecting the interests of both the Company and its customers. If the Motion is granted, customer interests are protected because they will see no change in their bills as a result of PEF's petition for permanent base rate relief until the Commission has issued its final decision, assuming that decision is rendered within the 12-month statutory deadline, or at the end of the 12-month statutory period under Section 366.06(3). As a result, customers will commence paying the rates finally approved by the Commission or by operation of law. Likewise, Commission approval of the Company's Motion will protect the Company's interests by providing the Company the benefit of its statutory right to relief in an alternative fashion. Accordingly, for these reasons, PEF requests that its Motion be granted.

8. PEF proposes the creation and operation of the regulatory asset or liability, if this Motion is granted, in the following manner. PEF will record a regulatory asset for the period beginning January 1, 2010 up to the effective date of the 2010 base rate increase. The regulatory asset will be equal to the Commission-approved increase in revenues that would have been collected beginning with the first billing cycle in January 2010 assuming the Commission had voted on November 19<sup>th</sup> as originally planned. This amount will be calculated by multiplying the Commission-approved annual revenue increase by the projected applicable month's sales divided by projected annual sales as filed in the base rate proceeding (*Annual Revenue Increase*

\* (Projected Applicable Month's Sales/Projected Annual Sales)). The annual revenue increase is defined as the amount of the increase granted less the amounts collected through the rate adjustment for the Bartow Limited Proceeding and the Interim Rate Proceeding. The regulatory asset or liability account will accrue interest at the 30-day commercial paper rate and will be collected through a rate adjustment on customer bills. The rate adjustment factor will be calculated by dividing the balance of the regulatory asset or liability account plus estimated interest by the forecasted base revenues for the remainder of 2010. The rate adjustment factor will be applied to actual billed base rate revenue for the remainder of 2010. Amounts collected through the rate adjustment will be applied against the balance of the regulatory asset account. Any balance remaining in the regulatory asset or liability account will be included in the fuel-clause true-up balance for 2010 and collected or refunded through the fuel clause in 2012.

9. Commission approval of this Motion and the authorization allowing PEF to collect or refund through a rate adjustment on customer bills the effect of the deferral of the base rate increase will meet the criteria established under (EITF) 92-7, "Accounting by Rate Regulated Utilities for the Effect of Certain Alternative Revenue Programs" for revenue recognition. Therefore, granting this Motion and establishing a regulatory asset or liability to adjust actual revenues earned by PEF to the revenue requirements approved by the Commission as provided by FAS 71 is appropriate. An example of the calculation of the regulatory asset based on approval of PEF's entire requested increase of \$499 million and the calculation of the related rate adjustment is provided on Exhibit No. 1 to this Motion. PEF is requesting approval of the methodology provided in Exhibit No. 1 for deriving the rate adjustment. The actual amount of the regulatory asset or liability and the actual rate adjustment will be submitted to the

Commission Staff for administrative approval after the Commission vote establishing the amount of the annual revenue increase.

10. PEF's Motion is driven by the unique and unprecedented circumstances facing the parties to this proceeding that led to the issues addressed at the October 27, 2009 Agenda Conference and the resulting Commission decision with respect to those issues. Absent these circumstances, and the specific request of PEF by the Commission at that Agenda Conference, PEF would not be moving the Commission for the relief requested in this Motion. As a result, this Motion is necessary to address unique circumstances and this Motion and the requested relief should not be considered precedent for future Commission action in base rate proceedings brought pursuant to the file and suspend provisions of Section 366.06(3).

11. PEF is filing this Motion for relief in response to the Commission's request at the October 27<sup>th</sup> Agenda Conference. PEF does not intend to waive and is not waiving the provisions of Section 366.06(3), which authorize PEF to put rates into effect subject to refund with the first billing cycle of January 2010 by filing this Motion. Thus, if the Motion is not granted in the time requested below, PEF will still need to determine whether to implement rates subject to refund pursuant to Section 366.06(3). PEF also does not intend to waive and is not waiving the statutory right to implement PEF's proposed rates if there is no final decision with respect to its rates within 12 months as provided by Section 366.06(3).

12. PEF requests expedited approval of the relief requested in this Motion. To comply with the provisions of Section 366.06(3) PEF must begin notifying customers of the implementation of rates subject to refund commencing with the first billing cycle of January 2010 by November 24, 2009. Accordingly, PEF needs an expedited decision on its Motion if an alternative to the implementation of PEF's rates subject to refund is going to be implemented.

**II. Statement of Conference with Parties of Record.**


13. Pursuant to Rule 28-106.204(3), F.A.C., PEF is in the process of consulting with the parties of record. Given the short timeframe, PEF has not been able to obtain positions from all parties. But PEF is optimistic, given its initial conversations with some of the parties, including OPC, that it will be able to reach agreement on its motion. PEF will continue to work with the parties to come to an agreement.

**III. Conclusion.**

14. For all the reasons provided above, PEF respectfully requests expedited approval by the Commission of the creation of a regulatory asset or liability as described in this Motion as an alternative to the implementation of rates subject to refund pursuant to the requirements of Section 366.06(3), Florida Statutes, consistent with the Commission's request at the October 27, 2009 Agenda Conference.

Respectfully submitted this 20 day of November, 2009.

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**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that a true and correct copy of the foregoing has been served via electronic and U.S. Mail to the following counsel of record as indicated below on this 22<sup>nd</sup> day of November, 2009.

  
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# **EXHIBIT 1**

**Progress Energy Florida**

**Example of 2010 Regulatory Asset and Rate Adjustment Calculation (for illustrative purposes only)**

**1 2010 REVENUE INCREASE PER RATE CASE REQUEST:**

2	Revenue Increase per 2010 Rate Case <sup>1</sup>	\$499,997,000
3	Less Bartow Repower Rate Adjustment <sup>2</sup>	(126,212,000)
4	Less Interim Rate Adjustment <sup>2</sup>	(13,078,000)
5	Remaining Increase	<u>\$360,707,000</u>

- 6 <sup>1</sup> Revenue increase will be replaced with the amount approved in the final Commission decision.  
 7 <sup>2</sup> Rate adjustment for Bartow & Interim remains in effect until final implementation of base rate increase.  
 8 Amounts are based on Order No. PSC-09-0415-PAA-EI for Bartow and PSC-09-0413-PCO-EI for Interim .

**9 2010 REGULATORY ASSET AND COLLECTION VIA RATE ADJUSTMENT BEGINNING MARCH 2010:**

10		A	B	C	D	E	F	G	H	I
		Retail		Monthly	Reg Asset	Reg Asset	Interest	Sales as % to	Estimated Reg Asset	Estimated Reg
		Sales kWh	% to Total	Reg Asset	Beg Bal	Addition	@ 2% <sup>3</sup>	Total Sales Mar	Collection	Asset
								Dec		End Bal
11										
12	Jan	3,112,999	8.02%	\$28,926,167	\$0	\$28,926,167	\$24,105			\$28,950,272
13	Feb	2,918,797	7.52%	27,121,631	28,950,272	27,121,631	70,852			56,142,754
14	Mar	2,737,887	7.05%	25,440,604	56,142,754		89,631	8.35%	\$4,728,078	51,504,308
15	Apr	2,777,479	7.15%	25,808,496	51,504,308		81,843	8.47%	4,796,449	46,789,702
16	May	3,009,511	7.75%	27,964,550	46,789,702		73,652	9.18%	5,197,147	41,666,207
17	Jun	3,509,254	9.04%	32,608,191	41,666,207		64,394	10.70%	6,060,157	35,670,444
18	Jul	3,769,165	9.71%	35,023,299	35,670,444		54,027	11.50%	6,508,999	29,215,471
19	Aug	3,819,774	9.84%	35,493,561	29,215,471		43,195	11.65%	6,596,396	22,662,270
20	Sep	3,878,707	9.99%	36,041,170	22,662,270		32,189	11.83%	6,698,168	15,996,290
21	Oct	3,413,691	8.79%	31,720,214	15,996,290		21,748	10.41%	5,895,129	10,122,910
22	Nov	2,966,550	7.64%	27,565,354	10,122,910		12,602	9.05%	5,122,957	5,012,555
23	Dec	2,905,036	7.48%	26,993,763	5,012,555		4,174	8.86%	5,016,728	0
24		<u>38,818,850</u>	<u>100.00%</u>	<u>\$360,707,000</u>		<u>\$56,047,797</u>	<u>\$572,412</u>	<u>100.00%</u>	<u>\$56,620,209</u>	

25 Mar-Dec

84.46%

26

27 Total Proposed Base Rate Billed Revenues per MFR E-12 pg 2 of 2 (see attached)

\$ 1,943,332,000

28 Mar - Dec Sales as % of Total Sales (col B, line 25)

84.5%

29 Estimated Proposed Base Rate Revenue for Mar-Dec based on % Sales above (line 27 \*line 28)

\$ 1,641,371,000

30 Regulatory Asset to be collected (col E, line 24)

56,047,797

31 Estimated Interest on Regulatory Asset (col F, line 24)

572,412

32 Total Amount to be collected (line 30 + line 31)

\$ 56,620,209

33 Rate Adjustment - to be Applied to Base Rate Revenues (line 32/line 29)

3.45%

34

35 <sup>3</sup> Actual 30-day commercial paper interest rate will be applied to remaining balance.