

**Ruth Nettles**

090079-EI  
090144-EI  
090145-EI

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**Subject:** RE: Filing Docket 090079  
**Attachments:** Docket 090079 PEF resp opp to reschedule.pdf; Docket 090079 PEF ntc service errata.pdf

In re: Petition for increase rates by Progress Energy Florida, Inc.

Attached for filing is Progress Energy Florida, Inc.'s Response in Opposition to Intervenors' Motion to Reschedule Hearing or, in the Alternative, for Other Relief [7 pages] and Progress Energy Florida, Inc.'s Notice of Service of Errata Sheet [2 pages].

This filing is made on behalf of Progress Energy Florida by:

Shelly Schrand on behalf of James Michael Walls

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DOCUMENT NUMBER-DATE

09658 SEP 17 8

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

In re: Petition for limited proceeding to include  
Bartow repowering project in base rates by  
Progress Energy Florida, Inc.

Docket No. 090144-EI

In re: Petition for expedited approval of the  
deferral of pension expenses, authorization to  
charge storm hardening expenses to the storm  
damage reserve, and variance from or waiver  
of Rule 25-6.0143(1)(c), (d) and (f), F.A.C., by  
Progress Energy Florida, Inc.

Docket No. 090145-EI

Submitted for filing: September 17, 2009

**PROGRESS ENERGY FLORIDA INC.'S RESPONSE IN OPPOSITION  
TO INTERVENORS' MOTION TO RESCHEDULE HEARING OR,  
IN THE ALTERNATIVE, FOR OTHER RELIEF**

Progress Energy Florida, Inc. ("PEF" or "Company") files this response in opposition to the Intervenors'<sup>1</sup> motion to reschedule evidentiary hearings or, in the alternative, for other relief ("Motion"). In opposition to the Motion, PEF states:

The fundamental basis of the Motion is that, through the filing of its rebuttal testimony and exhibits, PEF "effectively amended its request from an annual increase of \$499.997 million per year to an increase of \$593.237 million per year by filing a new load and energy forecast in rebuttal testimony." (Motion, page 2) This is incorrect. There is no "effective amendment" to increase the revenue request, much less an explicit amendment. To the contrary, PEF has explicitly said that it is *not* amending its original request of \$499 million. As stated at pages 31-32 of the rebuttal testimony of Peter S. Toomey:

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<sup>1</sup> The Intervenors for purposes of the Motion were the Citizens of Florida, the Attorney General, the Florida Retail Federation, the Florida Industrial Power Users Group, and White Springs Agricultural Chemicals d/b/a PCS Phosphates.

DOCUMENT NUMBER-DATE

09658 SEP 17 8

FPSC-COMMISSION CLERK

Q. Is the Company proposing an increase to the initial rate request based on the updated sales forecast?

A. No, we are not. We are using the updated sales forecast and revised cost of service study to show that, compared to the Company's initial forecast and study, our revenue requirements would be even higher if PEF were to file a rate case today based on these updated figures....

The fact that PEF is not seeking more than a \$499 million revenue increase is also clearly articulated in PEF's positions in the Prehearing Order:

Despite this changed outlook [in the updated forecast], PEF is not seeking a revenue increase greater than the \$499 million contained in its original request. (Basic Position, Page 8)

\* \* \*

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

PEF: Yes. At the time of PEF's original filing, the requested increase of \$499,997,000 was appropriate, subject to the adjustment to net operating income and rate base described herein. PEF is not seeking a revenue increase greater than the \$499,997,000 contained in its original request. However, as a result of the updated sales forecast filed in the Rebuttal Testimony of John B. Crisp, an additional \$94,830,000 above the requested level would be required to allow PEF to earn its requested rate of return for 2010.

Intervenors, of course, know that PEF expressly said in its rebuttal testimony and in its prehearing statement that PEF is not seeking more than a \$499 million revenue increase but nowhere in their motion do they tell the Commission that PEF has said this is its position. Because PEF clearly has not amended its request and is not amending its request the Intervenors' motion is moot and should therefore be denied.

PEF has filed a revised load and sales forecast as Exhibit JBC-9 to the rebuttal testimony of Mr. Crisp, which shows lower sales during the projected test year compared to the forecast filed at the time of the MFRs. PEF also filed a revised Jurisdictional Separation

Study, which corresponds to the revised forecast, as Exhibit WCS-12 to the rebuttal testimony of Mr. Slusser. Finally, the rebuttal testimony of Mr. Toomey and Exhibit PT-17 to that testimony show the impact on revenues of the revised studies.<sup>2</sup> PEF filed this rebuttal testimony and exhibits to rebut testimony the Intervenor included in this proceeding regarding the impact of lower sales.

The testimony of Mr. Crisp and Mr. Toomey directly responds to the pre-filed testimony of FIPUG witness Marz, who says that because rates are being set in a depressed economy with lower growth, PEF will have the opportunity to experience higher returns to shareholders.<sup>3</sup> Mr. Crisp and Mr. Toomey testify that PEF is experiencing slower sales growth than originally forecast and that lower sales mean that PEF needs additional revenues just to cover its costs.<sup>4</sup> The revised load forecast, with its lower projected sales, and the resulting impact described in PEF's rebuttal testimony and exhibits demonstrate that lower sales means additional revenues are needed to cover costs. The Intervenor cannot legitimately object to rebuttal testimony and exhibits that are directly responsive to the testimony of one of their own witnesses. Simply put, if they did not want to get into the impact of lower sales on PEF they should not have included Intervenor testimony on this point.

Additionally, the Intervenor has no justifiable reason to claim information regarding the impact of lower sales growth than originally projected is not relevant to this proceeding.

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<sup>2</sup> This updated information should not have come as a surprise to the parties. The revised jurisdictional separation study was furnished to parties on June 19, 2009, as a supplemental response to OPC's Third Set of Interrogatories, No. 118. A discussion of the updated forecast, showing the revenue requirement impact, was provided to the parties on June 22, 2009, in response to Staff's Eighth Set of Interrogatories, No. 118.

<sup>3</sup> Marz testimony at 8.

<sup>4</sup> Crisp rebuttal at 15-17; Toomey rebuttal at 30-33.

OPC's own discovery requests demonstrate that updated forecast information is relevant to the ratemaking process. OPC's Interrogatory No. 118 specifically asked:

118. Budget. Have **any** revisions been made to the Company's 2010 budget/forecast since the version used in preparing the MFRs was developed? **If yes, provide a detailed description of all revisions and changes and specifically identify the impact on the amounts included in the MFRs.**

(emphasis added). OPC could not in good faith have asked for updated forecast information under the discovery rules unless they believed the request was relevant or material to the ratemaking proceeding. And if PEF had responded with a revised forecast showing stronger growth and increased sales projections, OPC and the other Intervenors would undoubtedly be using that response to seek a downward adjustment in PEF's proposed revenue increase.

Moreover, the Commission has previously recognized that it is free to use whatever forecast, supported by the record, best represents the expected conditions in the projected test year.<sup>5</sup> In the 1992 Florida Power Corporation rate case, the Commission stated:<sup>6</sup>

B. Forecast.

We reviewed the company's original forecasts of customers and KW by revenue class and system KW for 1992 and 1993 (Exhibit 147), the revised forecast (Exhibit 148), and the relationship of the original to the revised documents. We also reviewed Public Counsel's filing on the forecast. We have voted for using a revised forecast which reduces the 1992 forecast KWH by 3.59 percent and the 1993 forecast KWH by 2.25 percent.<sup>7</sup>

The May 1992 forecast variance (Exhibit 37) showed actual year-to-date KWH sales to be 5.8% below the original KWH forecast.

Nothing we have heard at the hearing persuaded us that the originally filed forecast is the better one to use. Instead, we believe that economic

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<sup>5</sup> The parties have stipulated that the projected test period of the twelve months ended December 31, 2010, is the appropriate test year in this case.

<sup>6</sup> *In re: Petition for a rate increase by Florida Power Corporation*, Order No. PSC-92-1197-FOF-EI issued October 22, 1992 in Docket No. 910890-EI.

<sup>7</sup> Like the current case, a downward revision in the forecast in the 1992 case had the effect of increasing revenue requirements.

conditions warrant our reliance on the revised forecast. In addition, reliance on the actual and more recent data that is available is generally better than a projection. We have confidence in the integrity of the company's methodology in preparing the forecast and the record demonstrates that the company's forecast process is inherently unbiased.

The Commission has the discretion to use the original forecast, the revised forecast, forecasts by other parties, or some numbers in-between so long as the determination is based on the record. *Gulf Power v. Florida Public Service Commission*, 453 So.2d 799 (Fla. 1984)

(Internal transcript citations omitted)

This information is relevant. The Commission has the right to use the original forecast or the revised forecast, at its discretion, based on all the evidence in the record.

PEF recognizes that it is not entitled to receive a revenue increase in excess of its original \$499 request and has not asked for such an increase. However, PEF is entitled to have the Commission use the most appropriate data – including the updated sales forecast – in calculating its required revenue increase. If that calculation yields an answer in excess of \$499 million, PEF is simply limited to the amount it originally requested, and must forego the opportunity to recover its full authorized rate of return.

Intervenors cite *In re: General Development Utilities, Inc.*,<sup>8</sup> as support for their request to restart the rate case clock based on what they characterize as information that was not provided until the filing of PEF's rebuttal.<sup>9</sup> That case is inapposite. First, it involved the utility's attempt to include in rate base a substantial item of plant which existed as of the date the MFRs were filed, but which had been omitted from the original filing. Second, the utility sought to increase its revenue request above the amount contained in its initial petition for a rate increase. Neither situation is present here. PEF did not omit anything from its original filing, it has simply provided updated load and sales forecast information in discovery at the

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<sup>8</sup> 87 FPSC 10:356, Order No. 18335 issued October 22, 1987.

<sup>9</sup> As discussed in footnote 2, Intervenors have had access to the updated information since June, 2009, shortly after the revised forecast was completed.

request of OPC and in rebuttal to testimony filed by one of Intervenor's own witnesses.

Unlike GDU, PEF has not amended the amount of revenue increase it is seeking.

Under the circumstances of this case, Intervenor's request to reschedule the evidentiary hearings is nothing more than an attempt to delay the implementation of a rate increase to which PEF is entitled. Their alternative request to strike all testimony by PEF claiming "additional revenue requirements" on account of its new sales forecast is likewise inappropriate. To the extent the Intervenor contend that PEF is seeking more than \$499 million in rate relief, they are demonstrably wrong. To the extent they contend that the Commission cannot consider the updated sales forecast to support up to \$499 million of relief, their position is inconsistent with Commission precedent. *See Florida Power Corporation* at footnote 6, above.

WHEREFORE, for all the reasons stated above, PEF requests that the Commission deny Intervenor's request to reschedule the evidentiary hearings in this docket or, in the alternative, to strike testimony filed by PEF.

Respectfully submitted,

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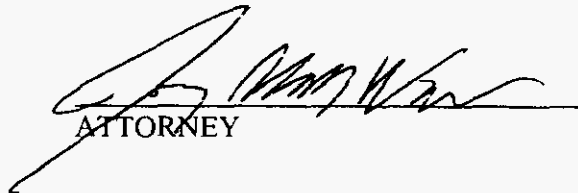
  
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**CERTIFICATE OF SERVICE**

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 17<sup>th</sup> day of September, 2009.

  
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