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Subject:	**FPSC Docket 090079 - AG's Post-Hearing Brief**
Attachments:	**AG_Posthearing_bref.doc; AG_Posthearing_bref.doc**

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b. Docket No. 090079-EI, In re: Petition for Rate Increase by Progress Energy Florida

c. Filed on behalf of the Attorney Geeneral Springs Agricultural Chemicals, Inc. d/b/a PCS Phosphate – White Springs

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e. The document being filed is the Attorney General's Post-Hearing Brief and Statement of Issues and Positions

(See attached file: AG_Posthearing_bref.doc)

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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 ORDER NO. PSC-09-0638-PHO-EI Filed : October 19, 2009

ATTORNEY GENERAL'S POST-HEARING BRIEF

The Attorney General, pursuant to the Prehearing Order in this docket, Order No. PSC-09-0638-PHO-EI, the Order Establishing Procedure, Order No. 09-0190-PCO-EI, and Rule 28-106.215, Florida Administrative Code, hereby submits the Attorney General's Post-Hearing Statement of Issues and Positions and Brief.

BASIC POSITION

AG: 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 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. Progress did not deny these customer complaints but merely stated that they had resolved most of these complaints. However the company did not dispute that the problems, such as those caused by vegetation overgrowth, were preventable. Therefore, the testimony of the customers demonstrates that the service quality by Progress is not adequate and the company should be required to implement procedures to correct these problems.

This testimony clearly shows that the rate increase requested by Progress will not provide a fair and reasonable rate for its customers during this difficult economic time and accordingly should be denied.

VIII. ISSUES AND POSITIONS

ISSUE 1: **DROPPED**

TEST PERIOD AND FORECASTING

ISSUE 2: **CATEGORY 1 STIPULATION** - See Section X, Proposed Stipulations

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

AG Position: No position.

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

AG Position: No. Support the position of the Office of Public Counsel.

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

AG Position: No. Support the position of the Office of Public Counsel.

QUALITY OF SERVICE

ISSUE 6: Is the quality and reliability of electric service provided by PEF adequate?

AG Position: No. Many customers testified about concerns with the service quality of Progress. Although Progress indicated that it had resolved most concerns since the hearing, it also agreed that customers should not have needed to attend a service hearing to have their concerns addressed. Progress emphasized the many means available to address customer complaints, but many customers attending the hearings testified that they had not yet had their concerns addressed. More significantly, although Progress refers to J.D. Power's ratings of its customer satisfaction, the recent J.D. Power report, EXH 265, indicates that residential customers rank their satisfaction with Progress below average for its segment of South Region—Large Utilities. Of some concern is the fact that Progress, with a score of 619, ranks substantially below its sister company, Progress Energy Carolinas, which scored 657. Mr. Dolan testified that this low ranking may be attributable to customer dissatisfaction with Progress's rates, rather than quality of service, TR 261, but this does not change the fact of the low ranking. Neither does it put to rest the poor manner in which Progress addressed the many customer complaints regarding such issues as vegetation overgrowth and the manner in which the company undertook repairs. Progress's head of customer service testified that it would make repairs only if the customer had purchased two levels of surge protectors provided by the company at a substantial expense. This testimony conflicts with the testimony of Mr. Dolan, who stated that the company would make repairs for damage Progress had caused even if the customer had not purchased the company's surge protectors. This conflict should be of concern to the Commission since it clearly reflects the potential for inconsistent handling of identical complaints, which could result in customers not receiving consistent and acceptable service. The testimony of the Progress customer service representative is consistent with the testimony of customers who complained about the lack of response and company's refusal to cover damages suffered. The testimony of the customers is sufficient for this Commission to require Progress to implement programs to address its persistent vegetation overgrowth problems prior to it impacting service.

DEPRECIATION STUDY

ISSUE 7: **CATEGORY 1 STIPULATION**

ISSUE 8: What are the appropriate capital recovery schedules?

AG Position: The appropriate capital recovery schedules are those recommended by Jacob Pous.

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

AG Position: Support OPC's position.

ISSUE 10: What life spans should be used for PEF's coal plants?

AG Position: Agree with OPC that the appropriate depreciation life span for PEF's coal units is 60 years.

ISSUE 11: What life spans should be used for PEF's combined cycle plants?

AG Position: Support OPC's position as set forth in the testimony of Jacob Pous.

ISSUE 12: 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.?

AG Position: The appropriate depreciation parameters for PEF's generating plants are those recommended by Jacob Pous.

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?

AG Position: The appropriate depreciation parameters are those recommended by Jacob Pous.

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?

AG Position: Jacob Pous's testimony and exhibits indicate that Progress has a depreciation reserve excess of $858 million.

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

AG Position: Support OPC's position so that as much of this excess as possible should be returned to the consumers who paid for this excess depreciation.

ISSUE 16: **CATEGORY 1 STIPULATION** - See Section X, Proposed Stipulations

FOSSIL DISMANTLEMENT COST STUDY

ISSUE 17: Should the current-approved annual dismantlement provision be revised?

AG Position: Support OPC's position.

ISSUE 18: What, if any, corrective reserve measures should be approved for fossil dismantlement?

AG Position: No position.

ISSUE 19: What is the appropriate annual provision for dismantlement?

AG Position: Agree with OPC's position.

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

AG Position: No.

ISSUE 21: **DROPPED**

NUCLEAR DECOMMISSIONING COST STUDY

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

AG Position: No position.

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)?

AG Position: No position.

RATE BASE

ISSUE 24: Has the company removed all non-utility activities from rate base?

AG Position: No.

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

AG Position: Agree with OPC's position.

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?

AG Position: No position.

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

AG Position: 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?

AG Position: Agree with OPC that 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?

AG Position: 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?

AG Position: No position.

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?

AG Position: 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?

AG Position: No position.

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?

AG Position: Yes. Support OPC's position.

ISSUE 34: **CATEGORY 2 STIPULATION** - See Section X, Proposed Stipulations

ISSUE 35: Should unamortized rate case expense be included in Working Capital?

AG Position: No, as demonstrated by testimony of Mr. Schultz.

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

AG Position: No.

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

AG Position: 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?

AG Position: No. Support OPC's position.

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?

AG Position: 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?

AG Position: 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?

AG Position: No. Support OPC's position as explained by Dr. Woolridge.

ISSUE 42: What is the appropriate equity ratio that should be used for PEF for purposes of setting rates in this proceeding?

AG Position: Support OPC's position as explained by Dr. Woolridge.

ISSUE 43: Have rate base and capital structure been reconciled appropriately?

AG Position: No position.

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

AG Position: Support OPC's position as recommended by Dr. Woolridge.

ISSUE 45: What is the appropriate cost rate for short-term debt for the projected test year?

AG Position: Support OPC's position.

ISSUE 46: What is the appropriate cost rate for long-term debt for the projected test year?

AG Position: Support OPC's position.

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

AG Position: 9.75%, as explained by Dr. Woolridge.

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?

AG Position: Concur with OPC's position as explained by Dr. Woolridge.

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?

AG Position: Agree with 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?

AG Position: Agree with OPC's position.

ISSUE 51: **CATEGORY 2 STIPULATION** - See Section X, Proposed Stipulations.

ISSUE 52: **CATEGORY 2 STIPULATION** - See Section X, Proposed Stipulations.

ISSUE 53: **CATEGORY 2 STIPULATION** - See Section X, Proposed Stipulations.

ISSUE 54: **CATEGORY 2 STIPULATION** - See Section X, Proposed Stipulations.

<u>ISSUE 55</u>: **DROPPED**

<u>ISSUE 56</u>: Has PEF made the appropriate adjustments to remove Aviation cost for the test year?

<u>AG Position</u>: No position.

<u>ISSUE 57</u>: Should an adjustment be made to advertising expenses?

<u>AG Position</u>: No position.

<u>ISSUE 58</u>: **DROPPED**

<u>ISSUE 59</u>: Is PEF's proposed allowance of $2,412,100 for directors and officers liability insurance appropriate?

<u>AG Position</u>: No.

<u>ISSUE 60</u>: Is PEF's proposed allowance of $3,669,000 for 2010 injuries and damages expense appropriate?

<u>AG Position</u>: No.

<u>ISSUE 61</u>: Is PEF's proposed allowance of $23,228,000 for 2010 A&G office supplies and expenses appropriate?

<u>AG Position</u>: No.

<u>ISSUE 62</u>: Should an adjustment be made to PEF's proposed 2010 allowance for O&M expense to reflect productivity improvements, if any?

<u>AG Position</u>: Yes.

<u>ISSUE 63</u>: Should an adjustment be made to PEF's requested level of salaries and employee benefits for the 2010 projected test year?

AG Position: Yes. Such salaries and benefits should be reduced to the extent that customers testified their salaries and benefits have been reduced.

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

AG Position: No. Agree with OPC that Progress's proposed increase of 4.7% in base salaries is excessive. In light of customer testimony regarding pay cuts, lost jobs, frozen benefits and Social Security payments, it is appropriate that Progress's employees not receive salary increases paid for by consumers during such difficult economic times.

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

AG Position: No.

ISSUE 66: Should the proposed 2010 allowance for incentive compensation be adjusted?

AG Position: Yes. Agree with OPC that Progress's proposed incentive compensation amount of $25,371,639 and proposed $12,094,011 for long-term incentive compensation should be disallowed because such amounts do not provide a significant benefit for Progress customers.

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

AG Position: Yes. Agree with OPC that Progress's employee benefit expense should be reduced by $9,376,809.

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

AG Position: Yes. Support OPC's position.

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

AG Position: Yes. Support OPC's position.

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

AG Position: Yes. Support OPC's position.

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

AG Position: Yes, support OPC's position.

ISSUE 72: **DROPPED**

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

AG Position: Support OPC's position.

ISSUE 74: **CATEGORY 2 STIPULATION** - See Section X, Proposed Stipulations

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?

AG Position: Progress's allowed depreciation expense should be reduced by $113,112,961 as explained by Jacob Pous.

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

AG Position: Support OPC's position.

ISSUE 77: **CATEGORY 1 STIPULATION** - See Section X, Proposed Stipulations.

ISSUE 78: **CATEGORY 2 STIPULATION** - See Section X, Proposed Stipulations.

ISSUE 79: **CATEGORY 2 STIPULATION** - See Section X, Proposed Stipulations.

ISSUE 80: Should an adjustment be made to taxes other than income taxes for the 2010 projected test year?

AG Position: No position.

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

AG Position: Yes. Adopt OPC's position.

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

AG Position: Agree with OPC's position.

ISSUE 83: Is PEF's requested level of Operating Expenses in the amount of $1,249,372,000 for the 2010 projected test year appropriate?

AG Position: No. Adopt OPC's position.

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

AG Position: No. Adopt OPC's position.

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

AG Position: No. Adopt OPC's position.

REVENUE REQUIREMENTS

ISSUE 86: **CATEGORY 2 STIPULATION** - See Section X, Proposed Stipulations.

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

AG Position: No. This requested increase is excessive, especially under the current economic conditions. Progress does not need additional increases in order to maintain its profitability and meet the future electric needs of its customers. Under these circumstances, such a request is not in the public interest.

COST OF SERVICE AND RATE DESIGN

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

AG Position: No position with respect to the revenue calculation for 2010 in PEF's original case filed in March 2009. However, the Attorney General objects to consideration of the revised sales forecast filed on August 31, 2009, to the consideration of the jurisdictional cost study based thereon, and to any other consideration of the revised forecast with respect to this issue and to any other issue impacted by Progress's revised sales forecast.

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

AG Position: No position with respect to the jurisdictional separation cost study for 2010 in Progress's original case filed in March 2009. However, the Attorney General objects to consideration of the revised sales forecast filed on August 31, 2009, to the consideration of the jurisdictional cost study based thereon, and to any other consideration of the revised forecast with respect to this issue and to any other issue impacted by Progress's revised sales forecast.

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 Position: 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?

AG Position: No position.

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

AG Position: No position.

ISSUE 93: **CATEGORY 2 STIPULATION** - See Section X, Proposed Stipulations.

ISSUE 94: **CATEGORY 2 STIPULATION** - See Section X, Proposed Stipulations.

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?

AG Position: Adopt OPC's 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 transferred to the IS-2, IST-2, CS-2, and CST-2 rate schedules appropriate?

AG Position: Adopt OPC's position.

ISSUE 97: **CATEGORY 2 STIPULATION** - See Section X, Proposed Stipulations.

ISSUE 98: Are PEF's proposed customer charges appropriate?

AG Position: No.

ISSUE 99: Are PEF's proposed service charges appropriate?

AG Position: No.

ISSUE 100: Is PEF's proposed charge for Temporary Service appropriate?

AG Position: Adopt OPC's position.

ISSUE 101: Is PEF's proposed Premium Distribution Service charge appropriate?

AG Position: Adopt OPC's position.

ISSUE 102: **DROPPED**

ISSUE 103: **CATEGORY 1 STIPULATION** - See Section X, Proposed Stipulations.

ISSUE 104: **CATEGORY 2 STIPULATION** - See Section X, Proposed Stipulations.

ISSUE 105: **CATEGORY 2 STIPULATION** - See Section X, Proposed Stipulations.

ISSUE 106: **CATEGORY 2 STIPULATION** - See Section X, Proposed Stipulations.

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

AG Position: No position.

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

AG Position: No position.

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

AG Position: No position.

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

AG Position: No position.

ISSUE 111: What are the appropriate energy charges?

AG Position: Adopt position of OPC.

ISSUE 112: What are the appropriate demand charges?

AG Position: Adopt position of OPC.

ISSUE 113: What are the appropriate lighting charges?

AG Position: Adopt position of OPC.

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

AG Position: Adopt position of OPC.

ISSUE 115: What is the appropriate effective date for PEF's revised rates and charges?

AG Position: The appropriate effective date for any changes in PEF's rates and charges as a result of this docket is for usage (consumption) on and after January 1, 2010 and for services rendered on and after January 1, 2010.

ISSUE 115A: Are the rates proposed by Progress Energy Florida fair, just, and reasonable, and compensatory as those terms are used in Chapter 366, Florida Statutes, including specifically Sections 366.03, 366.041(1), 366.05(1), and 366.06(1), Florida Statutes?

AG Position: No. Progress's requested rates and return on equity are unreasonably high during these difficult economic times and the witnesses presented by OPC demonstrate that these rates are unnecessary for Progress to maintain its profitability and meet its customers' future electric needs. This is further emphasized by the recent increases which Progress has been granted, including the interim rates, the Bartow repowering, and the nuclear expenses granted on Friday. Although Progress argues that it needs greater revenues, the evidence demonstrates it has been profitable every year and has clearly not made all the available expense reductions in light of the proposed increases in salary and benefits which are consistent with previous years. This is contrasted with the testimony of the customers who must make significant sacrifices and choices as to whether to purchase food and medication or use their electricity. Some customers testified about taking medication every other day to save money and not turning on their electricity until it was dangerously hot. Others spoke of themselves or family members with medical problems that required 24-hour electricity and necessitated other sacrifices with food and medication. Many customers talked about living on retirement incomes that no longer covered their necessities and the fact that Social Security payments will be frozen for two years.

It is not in the public interest to allow the requested rate increase for Progress when the customers who paid their bills and made the company so profitable are struggling through difficult economic times. Many customers also noted that the benefits promised by Progress are years in the future and these paying customers are of such an age that they may well not experience any of these benefits. In light of these circumstances, it cannot be said that the requested rates are fair, reasonable or in the public interest.

ISSUE 115B: In fulfilling its mandate under Section 366.01, Florida Statutes, to regulate public utilities in the public interest and for the protection of the public welfare, and its mandate under Section 366.041(1) to fix fair, just, reasonable, and compensatory rates that consider among other things the value of such service to the public and that do not deny the utility a reasonable return upon its rate base, should the Commission grant any part of PEF's proposal to increase its base rate in this docket?

AG Position: No. Progress has already been granted increases this year, including interim rate increases, the Bartow repowering costs, and the nuclear costs on Friday. Progress cannot argue that its needs have not been met and the witnesses presented by OPC and the other interveners demonstrated that Progress does not need any further rate increase this year in order to make a reasonable return on its rate base and provide for the future electric needs of its customers. Progress is a profitable, regulated monopoly and even Progress's experts admitted that these conditions provide for a safe investment. Considering the circumstances which Progress customers are experiencing and the increases already granted Progress this year, no further increases are warranted to provide Progress a fair return on equity and future access to credit. The return on equity requested by Progress is also excessive and would be the highest ROE in the country. As OPC witnesses and customers who had experience in this area testified, regulated monopolies do not require high ROE to acquire credit. Progress admitted that it had never been denied credit (except possibly during a brief period last year when everyone was denied credit) and has been profitable each year. Accordingly, Progress's additional requested rate increase and requested return on equity should be denied.

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?

AG Position: Yes. The increase was not lawfully granted and should be refunded to customers, with interest.

ISSUE 117: **CATEGORY 2 STIPULATION** - See Section X, Proposed Stipulations.

ISSUE 118: **DROPPED**

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 Position: Yes, adopt position of the OPC.

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 Position: Yes, adopt the position of the OPC.

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?

AG Position: Yes, adopt the position of the OPC.

ISSUE 122: Should this docket be closed?

AG Position: Yes. After the Commission issues its order and that order has become final as a matter of law, this docket should be closed.

Respectfully submitted, this 19th day of October, 2009.

BILL McCOLLUM
Attorney General

s/ Cecilia Bradley
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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by electronic delivery this 19th day of October 2009 to the following:

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