

State of Florida



Public Service Commission

CAPITAL CIRCLE OFFICE CENTER • 2540 SHUMARD OAK BOULEVARD
TALLAHASSEE, FLORIDA 32399-0850

-M-E-M-O-R-A-N-D-U-M-

DATE: November 17, 2009

TO: Office of Commission Clerk (Cole)

FROM: Division of Economic Regulation (Slemkewicz)
Office of the General Counsel (Fleming) *JS CRP JB 19X*

RE: Docket No. 090079-EI – Petition for increase in rates by Progress Energy Florida, Inc.

AGENDA: 12/01/09 – Regular Agenda – Parties May Participate

COMMISSIONERS ASSIGNED: All Commissioners

PREHEARING OFFICER: Skop

CRITICAL DATES: None

SPECIAL INSTRUCTIONS: None

FILE NAME AND LOCATION: S:\PSC\ECR\WP\090079.RCM.DOC

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Case Background

This proceeding commenced on March 20, 2009, with the filing of a petition for a permanent rate increase by Progress Energy Florida, Inc. (PEF or Company). PEF requested an increase in its retail rates and charges to generate \$499,997,000 in additional gross annual revenues effective with the first billing cycle for January 2010. PEF also requested an interim rate increase in its retail rates and charges to generate \$13,078,000 in additional gross annual revenues. Order No. PSC-09-0413-PCO-EI, issued on June 10, 2009, in this docket, suspended PEF's proposed \$499,997,000 base rate increase and authorized the implementation of a \$13,078,000 interim base rate increase.

At the October 27, 2009 Agenda Conference, the Commission considered staff's recommendation concerning Governor Crist's request that the Commission postpone the

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consideration of both PEF's and Florida Power & Light Company's¹ pending base rate increase requests. The Commission approved January 11, 2010, and January 28, 2010 as alternative dates for the consideration of PEF's revenue requirements and rates, respectively. The Commission also determined that PEF, by statute² and under the terms of its last rate case stipulation,³ could begin charging the requested base rate increase on January 1, 2010, subject to refund. The Commission also requested that PEF do its best to minimize any potential impact on its ratepayers of increasing its base rates.

On November 2, 2009, PEF filed a 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 (F.S.) (Motion). The Office of Public Counsel (OPC) filed a response (Response) to PEF's Motion on November 9, 2009. This recommendation addresses PEF's Motion and OPC's Response.

The Commission has jurisdiction over this subject matter pursuant to the provisions of Sections 366.04, 366.05 and 366.06, F.S.

¹ Docket No. 080677-EI, In re: Petition for increase in rates by Florida Power & Light Company.

² Section 366.06(3), Florida Statutes

³ Order No. PSC-05-0945-S-EI, issued September 28, 2005, in Docket No. 050078-EI, In re: Petition for rate increase by Progress Energy Florida, Inc.

Discussion of Issues

Issue 1: Should PEF be authorized to establish a regulatory asset or liability in lieu of implementing the proposed \$499,997,000 base rate increase, effective January 1, 2010?

Recommendation: Yes. PEF should be authorized to establish a regulatory asset or liability in lieu of implementing the proposed \$499,997,000 base rate increase, effective January 1, 2010. The regulatory asset/liability should be collected or refunded through a rate adjustment on customer bills for the remainder of 2010 after new permanent base rates have been implemented. Any remaining balance in the regulatory asset/liability should be included in the capacity cost recovery clause⁴ true-up balance for 2010. In addition, PEF should not be authorized to accrue any interest on the accumulated balance in the regulatory asset/liability. (Slemkewicz)

Staff Analysis: At the October 27, 2009 Agenda Conference, the Commission considered staff's recommendation concerning Governor Crist's request that the Commission postpone the consideration of PEF's pending base rate increase request. The Commission approved January 11, 2010, and January 28, 2010, as alternative dates for the consideration of PEF's revenue requirements and rates, respectively. The Commission also determined that PEF, by statute⁵ and under the terms of its last rate case stipulation,⁶ could begin charging the requested base rate increase on January 1, 2010, subject to refund. The Commission also requested that PEF do its best to minimize any potential impact on its ratepayers of increasing its base rates.

In response to the Commission's request, PEF filed a Motion seeking approval for authorization to establish a regulatory asset or liability as an alternative to the implementation of its proposed \$499,997,000 base rate increase on January 1, 2010, subject to refund. The regulatory asset/liability would capture the base rate revenue difference between PEF's current base rates⁷ and the revised base rates ultimately determined by the Commission for the period from January 1, 2010, until new base rates are implemented. A regulatory asset would be created if PEF collected less base rate revenue than it is ultimately entitled to recover. This amount would be recovered from the ratepayers. Conversely, a regulatory liability would be created if PEF collected more base rate revenue than it is ultimately entitled to recover. This amount would be refunded to the ratepayers. PEF's proposal included the calculation of interest on any outstanding balance in the regulatory asset/liability.

OPC filed a Response to PEF's Motion on November 9, 2009. OPC's position can be summed up in the following two paragraphs from its Response:

11. In light of the unique and unusual circumstances of this proceeding, and on the condition that the resolution of PEF's proposal will never be considered precedential for any departure from the strict and historical application of the

⁴ Docket No. 090001-EI, In re: Fuel and purchased power cost recovery clause with generating performance incentive factor, and successor dockets.

⁵ Section 366.06(3), Florida Statutes

⁶ Order No. PSC-05-0945-S-EI, issued September 28, 2005, in Docket No. 050078-EI, In re: Petition for rate increase by Progress Energy Florida, Inc.

⁷ Current base rates include the Bartow Repowering rate adjustment (\$126,212,000) and the Interim rate adjustment (\$13,078,000).

requirements [of] Section 366.06(3), Florida Statutes, the OPC is willing to enter a limited stipulation of parties (or the functional equivalent) as to the creation of the regulatory asset or liability in order to avoid the possibility of customers bearing a level of rate increase, even temporarily, that is unlikely to result from the Commission's final determination. The OPC emphasizes that by its stated willingness to enter such a stipulation OPC does not relinquish its litigation position, which is that current base rates are unreasonably high and should be reduced. In that regard, the ultimate stipulation should be worded neutrally to refer to "revenue decrease" as well as "revenue increase."

12. OPC further states that it does not consent to the mechanism described in paragraphs 8 and 9 and Exhibit 1, but is willing to work with PEF, Staff and other parties to arrive at stipulation language that will ensure that the mechanism of the regulatory asset/regulatory liability achieves the intended result with no windfall to the company relative to the revenues that would be collected if the filed rates were to be implemented on January 1, 2010. The OPC has commenced discussions with the Company and believes that PEF will work in good faith with the intervenors and the staff through the implementation of final rates in March 2010 to fashion an appropriate surcharge mechanism and amount. The OPC does not believe that all of the details of estimation and collection of the asset and surcharge need be finally determined in the disposition of this Motion. Instead, the proposal by PEF can be approved contingent upon the Parties and the Staff agreeing to stipulation language and working out the final details. Once presented by the parties, the Commission can approve them at one of the two agendas set for the case in January 2010.

OPC also referred to the unique nature of the proceeding in paragraph 6 of its Response and listed 5 special circumstances in paragraph 7. Staff agrees with OPC that there are special and unique circumstances concerning the timing of the Commission's decision, such as:

- a. A stipulation that prohibits PEF from increasing base rates until a time certain beyond the 8-month date;
- b. A Commission vote scheduled in time to meet the 8-month time frame and the expiration of the stipulation;
- c. Two of the five Commissioners assigned to the case whose terms expire at the end of the stipulation are not reappointed by the Governor;
- d. A request by the Governor to delay the Commission vote beyond both the 8-month and stipulation expiration date; and
- e. The Commission granting the request to delay the vote beyond the two dates noted in subsection (d) above.

Staff believes that these circumstances are specific to the PEF rate case. Thus, the Commission's decision on this matter should not have any precedential value to any other cases.

A meeting among the parties and staff to discuss a possible resolution of the matters in PEF's Motion was held on November 12, 2009. OPC, PCS and PEF are in agreement that the concept of establishing a regulatory asset/liability as an alternative to the implementation of its proposed \$499,997,000 base rate increase on January 1, 2010, should be approved. The calculation of the regulatory asset/liability would be based on actual/estimated amounts for January and February, 2010. They further agreed that no interest should be accrued on the accumulated balance in the regulatory asset/liability. PEF and OPC also agreed with staff's suggestion that any true-up be accomplished through the capacity cost recovery clause rather than the fuel and purchased power adjustment clause.

Statement of Financial Accounting Standards 71 allows regulated companies to create a regulatory asset or liability, but they must have the approval of their regulator to do so. This concept of deferral accounting allows utilities to defer recovery of current revenues or expenses and seek recovery at a later time. By deferring the implementation of the \$499,997,000 proposed base rate increase and amortizing the recovery of any ultimately authorized base rate increase over a future period, a regulatory asset/liability would be created.

In staff's opinion, the establishment of a regulatory asset/liability in lieu of the implementation of its proposed \$499,997,000 base rate increase is responsive to the Commission's request that PEF do its best to minimize any potential impact on its ratepayers of increasing its base rates. The ratepayers would receive the benefit of not having to bear the full impact of PEF's proposed base rate increase, subject to refund, during January and February, 2010. The Company would benefit from the future recovery/refund of the base rate increase/decrease to which it is ultimately entitled during that period. Therefore, staff recommends that PEF should be authorized to establish a regulatory asset or liability in lieu of implementing the proposed \$499,997,000 base rate increase, effective January 1, 2010. The regulatory asset/liability should be collected or refunded through a rate adjustment on customer bills for the remainder of 2010 after new permanent base rates have been implemented. Any remaining balance in the regulatory asset/liability should be included in the capacity cost recovery clause⁸ true-up balance for 2010. In addition, PEF should not be authorized to accrue any interest on the accumulated balance in the regulatory asset/liability.

⁸ Docket No. 090001-EI, In re: Fuel and purchased power cost recovery clause with generating performance incentive factor, and successor dockets.

Docket No. 090079-EI
Date: November 17, 2009

Issue 2: Should this docket be closed?

Recommendation: No. This docket should remain open pending the Commission's final resolution of the Company's requested rate increase. (Fleming)

Staff Analysis: No. This docket should remain open pending the Commission's final resolution of the Company's requested rate increase.