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Subject: E-filing (Dkt. No. 070001-EI)
Attachments: 070001.response to PEF motion for spinoff.sversion.doc

Electronic Filing

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b. Docket No. 070001-EI

In re: Fuel and Purchased Power Cost Recovery Clause with Generating Performance Incentive Factor

c. Document being filed on behalf of Office of Public Counsel

d. There are a total of 8 pages.

e. The document attached for electronic filing is Citizens' Response to PEF's Motion for Creation and Stay of Spinoff Docket.

(See attached file: 070001.response to PEF motion for spinoff.sversion.doc)

Thank you for your attention and cooperation to this request.

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BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In Re: Fuel and Purchased Power)
Cost Recovery Clause with) DOCKET NO. 070001-EI
Generating Performance Incentive)
Factor) FILED: October 11, 2007
_____)

**CITIZENS' RESPONSE TO PEF'S MOTION FOR CREATION
AND STAY OF SPINOFF DOCKET**

The Citizens of the State of Florida, through the Office of Public Counsel, submit their Response to Progress Energy Florida, Inc's ("PEF") Motion to Establish Separate "Spin-Off" Docket and to Stay Separate Docket Pending Outcome of Motion for Reconsideration, and state:

1. In Docket No. 060658-EI, a spin-off of the 2006 proceeding on the fuel and purchased power cost recovery clause, Citizens requested the Commission to require PEF to refund overcharges stemming from PEF's failure to take advantage of opportunities to lower customers' costs of fueling Crystal River Units 4 and 5 by burning a blend of subbituminous and bituminous coals when subbituminous coal from the Powder River Basin was economically advantageous. The Commission ordered certain refunds of overcharges relating to the years 2003, 2004, and 2005. The staff recommendation that the Commission adopted in its decision contemplated that the Commission would examine the costs that PEF incurred to fuel Crystal River Units 4 and

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5 in 2006 and 2007 to determine whether the same failure affected ratepayers' costs in those years as well.

2. In Docket No. 070001-EI, the Commission has scheduled for November 6-8, 2007, an evidentiary hearing to consider, among other things, the final true-up of PEF's fuel costs for calendar year 2006. On October 1, 2007, the deadline for Intervenors' testimony in Docket No. 070001-EI, Citizens timely filed the testimony and exhibits of witness Robert Sansom. In the prefiled testimony, Mr. Sansom states that when PEF was procuring coal for Crystal River Units 4 and 5 to be delivered in 2006, Powder River Basin coal continued to be more economical than the bituminous coal that PEF procured. He testifies that as a result of the imprudence determined in Docket No. 060658-EI, in calendar year 2006 PEF again was unable to avail itself of the flexibility to burn a blend of the two coals that had been designed into the units. Applying the parameters of the Commission's decision in Docket No. 060658-EI, Mr. Sansom asserts that the Commission should require PEF to refund a minimum of \$14,235,491, representing 2006 overcharges, to customers.¹

3. On October 4, 2007, PEF filed its Motion to Establish Separate "Spin-Off" Docket to Examine Certain Coal Purchase Transactions and to Stay Separate Docket Pending Outcome of Motion for Reconsideration. In its motion, PEF recites that in Docket No. 060658-EI the Commission Staff recommended that the Commission direct PEF to supplement its 2006 Final True-up Testimony in Docket No. 070001-EI to

¹ This refund amount assumes a 20% PRB blend applicable to the full amount of coal burned in Crystal River Units 4 and 5.

“address whether the Company was prudent in its 2006 and 2007 coal purchases for CR4 and CR5,” but avers that whether the final order will so direct the Company is unclear. (Motion at page 2).² PEF contends the procedural schedule does not afford PEF and adequate opportunity to “develop relevant facts” “and, if warranted, prepare testimony.”

4. Citizens note that, with or without a directive from the Commission in the final order in Docket No. 060658-EI, the prudence or imprudence of procurement activities underlying the cost of coal burned in Crystal River Units 4 and 5 during 2006 is an appropriate issue for the November 2007 hearing. It is related to the question of the appropriate final true-up for 2006, which PEF sponsored in testimony filed in Docket No. 070001-EI on March 1, 2007. Having procured the coal burned in 2006, having collected the related costs, and having submitted testimony concerning the final true-up for the period, PEF cannot credibly claim to be at the starting point of “developing relevant facts” bearing on those activities.

5. Much as they did in Docket No. 060658-EI, through the testimony of expert witness Robert Sansom the Citizens have presented and analyzed the facts attending the procurement of the coal that PEF burned in Crystal River Units 4 and 5 during 2006. In this regard, it is pertinent to note that Mr. Sansom obtained the actual costs that PEF incurred in 2006 from the reports that PEF files with the Commission on an ongoing basis, and that Mr. Sansom obtained the cost of available PRB coal from bids that producers submitted to PEF during a formal Request For Proposals that PEF conducted in

²On October 10, 2007, the Commission issued Order No. PSC-07-0816-FOF-EI in Docket No. 060658-EI. The order contains the directive to PEF to address 2006-2007 costs.

2004 when it was arranging the supplies of coal to be delivered to Crystal River Units 4 and 5 in 2006.³ Further, Mr. Sansom's exhibits document fully the sources of his information and the bases for his calculations. For this reason, Citizens submit it would be entirely feasible for PEF to file any testimony directed to Mr. Sansom's presentation on the existing deadline of October 22, 2007.

6. In its motion, PEF also refers to two aspects of Mr. Sansom's prefiled testimony that are designed to develop the record in a way that will accommodate the Commission's decision on a motion for reconsideration that Citizens intend to file in Docket No. 060658-EI.⁴ It appears that the timing is such that the Commission will not have ruled on the motion for reconsideration by the time of the November hearing. However, the testimony is designed to develop a record that can be applied to implement the ruling on reconsideration.

7. Citizens continue to believe that, by including testimony designed to develop the record in a manner that would accommodate the ruling on the issues for the motion for reconsideration in Docket No. 060658-EI, they have enabled the Commission to proceed to assess the impact of PEF's imprudence on 2006 costs during the November 2007 hearing. However, because of the likely timing of a ruling on the motion for reconsideration, Citizens do not disagree with the suggestion that a more orderly procedure would defer evidentiary presentations until after the Commission has ruled on

³ In the same RFP, PEF solicited and received proposals for deliveries to CR4 and CR5 in 2007.

⁴ The aspects are (1) a calculation applying a 20% PRB assumption to the full coal requirements of CR4 and CR5 (as opposed to waterborne coal only) and (2) a quantification of 2006 overcharges based on the assumption of a 30% PRB blend.

motions for reconsideration. In addition, a spinoff that proceeds to hearing after the end of calendar year 2007 would enable parties to address both 2006 costs and final 2007 costs – something that could not be accomplished in the November 2007 hearing.

8. Citizens wish to emphasize that, because the Commission determined PEF's imprudence in Docket No. 060658-EI, and the remaining question is limited to whether and to what extent ratepayers bore unreasonably high coal costs because of that imprudence in 2006 and 2007, the proper scope of a spinoff docket would be far more limited than the scope of Docket No. 060658-EI. The actual costs that PEF incurred to fuel Crystal River Units 4 and 5 in 2006 are known, and soon the final costs for 2007 will be known. The bids that PEF received in 2004 for deliveries of PRB coal in 2006 and 2007 are known. Essentially, the purpose of the spinoff would be to accommodate the ability of the parties to address the question of 2006-2007 overcharges following, and in light of, disposition of any motions for reconsideration of the final order in Docket No. 060658. Neither a long delay nor an open-ended scope of proceeding is required to afford PEF and other parties that opportunity.

9. In summary, Citizens believe the issue of 2006 costs of fueling Crystal River Units 4 and 5 can be addressed in the November 2007 hearing scheduled in Docket No. 070001-EI. That avenue remains available to the Commission; 2007 costs could then be considered in Docket No. 080001-EI once final reports of 2007 costs have been filed. If the scope of the separate proceeding is limited appropriately to the parameters of the

decision in Docket No. 060658-EI, and if the matter is pursued expeditiously so as to avoid delay, Citizens do not object to the creation of a separate docket designed to provide a consolidated opportunity for parties to address the question of whether the imprudence determined in Docket No. 060658-EI caused ratepayers to bear unreasonably high costs of coal for Crystal River Units 4 and 5 in calendar years 2006 and 2007. In the event the Commission chooses this procedural path, to avoid any possible ambiguity on the subject the Commission should explicitly retain jurisdiction over amounts related to costs of fueling CR4 and CR5 in 2006 and 2007. If the Commission decides to establish a spinoff docket, Citizens request the opportunity to participate in a scheduling conference prior to the issuance of an Order on Procedure.

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the **CITIZENS' RESPONSE TO PEF'S MOTION FOR CREATION AND STAY OF SPINOFF DOCKET** has been furnished by electronic mail and U.S. Mail on this 11th day of October, 2007, to the following:

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