

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

**In re: Review of coal costs for
Progress Energy Florida's Crystal
River Units 4 and 5 for 2006
and 2007.**

DOCKET NO. 070703-EI

FILED: March 23, 2009

ATTORNEY GENERAL McCOLLUM'S MOTION TO INTERVENE

BILL McCOLLUM, Attorney General, State of Florida, petitions the Florida Public Service Commission to enter an order granting leave to the Attorney General to intervene in this Docket and states:

1. Article IV, Section 4 of the Florida Constitution provides that the Attorney General is the chief state legal officer. The courts have long recognized that the Attorney General, as chief state legal officer, is authorized to intervene in all actions affecting the citizens of Florida. *See State ex rel. Landis v. S. H. Kress & Co.*, 155 So. 823 (Fla. 1934) (Court upheld the power of the Attorney General to test by writ of quo warranto the right of a foreign corporation to operate in Florida); *State ex rel. Shevin v. Yarborough*, 257 So. 2d 891, 893 (Fla. 1972) ("Although the P.S.C. by virtue of Fla. Stat. § 366.01, F.S.A., exercises the police power of the State for the protection of the public welfare and by its statutorily authorized Rule 25-1.24, the Legal Department represents the general public interest in all rate cases, there is no statute which prohibits the Attorney General from representing the State of Florida as a consumer, and offering such evidence and argument as will benefit its citizens. Generally speaking, the Attorney General is Chief Counsel for the State which in final analysis is the people."); *State ex rel. Shevin v. Kerwin*, 279 So. 2d 836, 838 (Fla. 1973) (where trial court finds statute unconstitutional, it is proper for Attorney General to appear on appeal to defend statute even though he was not a party to action before the trial court and the State of Florida, through the

Attorney General, is proper party to any action in which the constitutionality of any general statute is raised).

2. In *Kress, supra*, the Court recognized the authority of the Attorney General to intervene and bring actions affecting the state and held:

The office of Attorney General has existed both in this country and in England for a great while. The office is vested by the common law with a great variety of duties in the administration of the government. It has been asserted that the duties of such an office are so numerous and varied that it has not been the policy of the Legislature of the States to specifically enumerate them; that a grant to the office of some powers by statute does not deprive the Attorney General of those belonging to the office under the common law. The Attorney General has the power and it is his duty among the many devolving upon him by the common law to prosecute all actions necessary for the protection and defense of the property and revenues of the State; to represent the state in all criminal cases before the appellate court; by proper proceedings to revoke and annul grants made by the State improperly or when forfeited by the grantee; by writ of quo warranto to determine the right of any one who claims or usurps any office, and to vacate the charter or annul the existence of a corporation for violations of its charter or for omitting to exercise its corporate powers; to enforce trusts and prevent public nuisances and abuse of trust powers. As the chief law officer of the State, it is his duty, in the absence of express legislative restrictions to the contrary, to exercise all such power and authority as public interests may require from time to time.

155 So. at 827.

3. This language recognizes the authority of the Attorney General to intervene in actions such as the instant one. In this action, Progress Energy Florida (PEF) has overcharged its customers \$61 million dollars by failing to use the most economical fuel source at its Crystal River Units 4 and 5 between 2006 and 2007, while passing along the charges for the design feature that would have allowed PEF to burn the less expensive fuel source.

4. Unnecessary charges are of concern to the public and require intervention by the Attorney General.

Wherefore, Bill McCollum, Attorney General, requests that he be allowed to intervene in the instant action.

Respectfully submitted,

BILL McCOLLUM
ATTORNEY GENERAL

s/ Cecilia Bradley
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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of Attorney General Bill McCollum's Motion to Intervene has been furnished by electronic mail and U.S. Mail on this 23rd day of March, 2009, to the following:

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