

Office of Commission Clerk Official Filing

Ruth Nettles

From: Cecilia Bradley [Cecilia.Bradley@myfloridalegal.com]
Sent: Monday, March 30, 2009 4:46 PM
To: Filings@psc.state.fl.us
Cc: Lewis Jr, Paul; Glenn, Alex; kelly.jr@leg.state.fl.us; miketwomey@talstar.com; jmcwhirter@mac-law.com; swright@yvlaw.net; jbrew@bbrslaw.com; MCGLOTHLIN.JOSEPH@leg.state.fl.us; Lisa Bennett; Keino Young; Triplett, Dianne; Walls, J. Michael
Subject: Attorney General's Prehearing Statement Docket No. 0709703_EI
Attachments: prehearing statement..doc



prehearing
statement..doc (6C)

Attached is the Attorney General's Prehearing Statement for filing in Docket No. 070703-EI. Thank you for your consideration.

(See attached file: prehearing statement..doc)

Cecilia Bradley
Senior Assistant Attorney General
General Civil/Tort Litigation
Office of the Attorney General
Tel.: (850) 414-3300
Fax: (850) 488-4872

E-mail:cecilia.bradley@myfloridalegal.com

Please note that Florida has a broad public records law, and that all correspondence to me via email may be subject to disclosure.

DOCUMENT NUMBER-DATE
02807 MAR 30 8
FPSC-COMMISSION CLERK

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

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 30, 2009

ATTORNEY GENERAL'S PREHEARING STATEMENT

Attorney General Bill McCollum, by and through the undersigned counsel and pursuant to the Order Establishing Procedure, Order No. PSC-08-0710-PCO-EI, issued October 29, 2008, hereby submits this Prehearing Statement.

APPEARANCES:

Cecilia Bradley
Senior Assistant Attorney General
Office of the Attorney General
The Capitol-PL01
Tallahassee, FL 32399-1050
On behalf of the Citizens of the State of Florida.

1. **WITNESSES:**

We have no witnesses. However, we reserve the right to question the witnesses offered by the other parties.

2. **EXHIBITS:**

We will sponsor no exhibits.

3. **STATEMENT OF BASIC POSITION**

In Order No. PSC-07-0816-FOF-EI, the Commission determined that Progress Energy Florida (PEF) was imprudent when it failed to obtain a permit authorizing it to burn the sub-bituminous coal that Crystal River Units 4 and 5 were designed to burn prior to 2003. It found that PEF can burn a blend containing at least 20% sub-bituminous coal without reducing the units' output. Based on a comparison of the cost of more economical sub-bituminous coal that producers offered during PEF's procurements (as those bids were evaluated by PEF) with the

DOCUMENT NUMBER-DATE

02807 MAR 30 8

FPSC-COMMISSION CLERK

highest costing 20% of coal that was actually delivered to Crystal River Units 4 and 5 during 2003, 2004, and 2005, the Commission ordered PEF to refund \$13.8 million to its customers.

2005 was the most recent year for which data was available when the Commission reviewed this matter in Docket No. 060658-EI. PEF did not obtain a permit authorizing it to burn sub-bituminous coal at Crystal River 4 and 5 until May of 2007, well after it had entered contractual arrangements for coal to be delivered to the units in 2006 and 2007. The Commission should therefore apply to actual costs of 2006 and 2007 the same test it applied to the years 2003, 2004, and 2005 to determine whether the imprudences identified in Order No. PSC-07-0816-FOF-EI continued to cause coal costs to be unreasonably high at Crystal River 4 and 5 in those years.

PEF has demonstrated the same imprudence for 2006 and 2007 as was identified in Order No. PSC-07-0816-FOF-EI. Although PEF's customers suffered the added expense of construction of a plant that would burn the sub-bituminous coal, PEF failed to use the less expensive coal that their customers had paid to use. Further, the sub-bituminous coal contains a lower sulfur content and customers were denied the opportunity to take advantage of lower costs for environmental compliance. Applying the standards which the PSC applied in Order No. PSC-07-0816-FOF-EI, to the instant case, PEF's CR4 and CR5 coal costs and related costs of emissions allowances were unreasonably high in 2006 and 2007 by a total of \$61 million, excluding interest.

At this time, PEF has failed to conduct test burns using higher blends of sub-bituminous coal. Even though PEF applied for a permit authorizing 50% sub-bituminous coal, and even though a higher limit in the permit could potentially lower customers' fuel cost in the future, PEF has failed to conduct the tests which DEP would need to authorize the higher level burns. The PSC should order PEF to test blends containing higher percentages of sub-bituminous coal in Crystal River 4 and 5. The tests should be overseen by an independent engineering firm, and the test results should be reported to the PSC. If the results of the test burns demonstrate a higher level of sub-bituminous coal is appropriate, PEF should seek an amendment to its permit.

4. STATEMENT OF FACTUAL ISSUES AND POSITIONS

ISSUE 1: Did the imprudences in PEF's fuel procurement activities determined in Order PSC-07-0816-FOF-EI result in the costs of coal actually delivered to Crystal River Units 4 and 5 during 2006 and 2007 being unreasonably high?

AG: Yes. Applying the same standards in Order No. PSC-07-0816-FOF-EI to the facts of this case for 2006 and 2007 establishes that the costs borne by customers were unreasonably high in the amount of \$61,279,193.

- a. How should the reasonableness of the costs of coal delivered to Crystal River Units 4 and 5 during 2006 and 2007 be measured?

AG: The PSC should apply the same standards it used in Order No. PSC-07-0816-FOF-EI.

- b. What candidates for alternative coal purchases should the Commission consider in evaluating whether more economical coal was available for delivery to Crystal River Units 4 and 5 during 2006?

AG: The alternative coal that should be compared with the costs of coal actually delivered in 2006 is the lowest cost coal that was available at the time of related procurement decisions. The lowest bids were for sub-bituminous coal from the Powder River Basin offered by Kennecott during the Request For Proposals that PEF conducted in April, 2004. The fact that the RFP was conducted in a year prior to the year of the deliveries that are the subject of the inquiry is no basis on which to exclude the bids from consideration. In fact, PEF did procure a portion of its 2006 requirements based on the results of the 2004 RFP.

- c. By what amount, if any, were the costs of coal actually delivered to Crystal River Units 4 and 5 unreasonably high in 2006?

AG: The 2006 coal costs at CR4 and CR5 were unreasonably high by the amount of \$25,149,162, excluding interest. To this amount must be added \$2,915,308, to account for the fact that the sub-bituminous coal which was not purchased contained far less sulfur and would have resulted in lower costs of emissions allowances.

- d. What candidates for alternative coal purchases should the Commission consider in evaluating whether more economical coal was available for delivery to Crystal River Units 4 and 5 during 2007?

AG: The PSC should consider the bids of two Indonesian producers of sub-bituminous coal. PEF, evaluated these bids from the Indonesian producers which showed that they were far more economical than the cost of the coal actually delivered. Indonesia is one of the leading producers of coal for international markets. The coals had extremely low ash and extremely low sulfur content, both of which are valuable properties.

- e. By what amount, if any, were the costs of coal actually delivered to Crystal River Units 4 and 5 unreasonably high in 2007?

AG: The 2007 coal costs at CR4 and CR5 were unreasonably high by the amount of \$25,866,364, excluding interest. In addition, the sub-bituminous coal contained far less sulfur than the coal actually delivered in 2007, and would

have enabled PEF to save customers \$7,348,059 in the form of lower costs of emissions allowances.

ISSUE 2: If the Commission determines that the costs of coal delivered to Crystal River Units 4 and 5 during 2006 and 2007 were unreasonably high, should it require PEF to issue a refund to its customers? If so, in what amount?

AG: Yes. In this case, the PSC should order Progress Energy to refund to customers the amount of \$61,279,193 plus interest.

ISSUE 3: Based on the evidence of PEF's fuel procurement approach and activities as they relate to Crystal River 4 and 5, what additional action, if any, should the Commission take in this docket?

AG: The PSC should direct PEF to conduct a test burn of blends designed to ascertain the highest percentage of sub-bituminous coal that can be used in a blend while maintaining 105% overpressure and satisfying all environmental requirements. The tests should be overseen by a qualified, independent engineering firm. The report should be furnished to the Commission by a date certain. If the results of a properly conducted test support the use of a blend containing more than 20% sub-bituminous coal, PEF should apply to the FDEP to have its permit amended accordingly.

5. STIPULATED ISSUES:

None.

6. PENDING MOTIONS:

None.

7. STATEMENT OF PARTY'S PENDING REQUESTS OR CLAIMS FOR CONFIDENTIALITY:

None..

8. OBJECTIONS TO QUALIFICATION OF WITNESSES AS AN EXPERT:

None.

9. STATEMENT OF COMPLIANCE WITH ORDER ESTABLISHING PROCEDURE:

The Attorney General's Office will comply with the Order Establishing Procedure.

Dated this 30th day of March, 2009.

Respectfully submitted,

BILL McCOLLUM
ATTORNEY GENERAL

s/ Cecilia Bradley
CECILIA BRADLEY
Senior Assistant Attorney General
Florida Bar No. 0363790

Office of the Attorney General
The Capitol - PL01
Tallahassee, FL 32399-1050
(850) 414-3300
Fax: (850) 488-4872

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing Attorney General's Prehearing Statement has been furnished by electronic mail and U.S. Mail to the following parties on this 30th day of March, 2009, to the following:

Keino Young, Esquire
Lisa Bennett, Esquire
Division of Legal Services
Florida Public Service Commission
2540 Shumard Oak Blvd.
Tallahassee, FL 32399-0850

Paul Lewis, Jr.
Director, Regulatory
Progress Energy Florida
106 E. College Ave., Suite 800
Tallahassee, FL 32301

R. Alexander Glenn, Esquire
John T. Burnett, Esquire
Progress Energy Service Co., LLC
Post Office Box 14042
St. Petersburg, Florida 33733-4042

James Michael Walls, Esq.
Dianne M. Triplett, Esq.
Carlton Fields, P.A.
Post Office Box 3239
Tampa, FL 33601-3239

John McWhirter
McWhirter, Reeves Law Firm
P.O. Box 3350
Tampa, FL 33601-3350

J. R. Kelly
Public Counsel
Joseph A. McGlothlin
Associate Public Counsel
Office of Public Counsel
c/o The Florida Legislature
111 West Madison Street
Room 812
Tallahassee, FL 32399-1400

s/ Cecilia Bradley
Cecilia Bradley