

**Ruth Nettles**

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**Sent:** Monday, July 27, 2009 3:21 PM  
**To:** Filings@psc.state.fl.us  
**Cc:** Audrey VanDyke; Caroline Klancke; cecilia\_bradley@oag.state.fl.us; Charles Rehwinkel; Dianne Triplett; Erik Saylor; F. Alvin Taylor; halmuthws@aol.com; jpous@ecpi.com; James W. Brew; John Burnett; John McWhirter; John Moyle; John T. LaVia; Joseph L. Adams; Karin S. Torain; Katherine Fleming; Keino Young; Khojasteh Davoodi; kimdismukes@cox.net; Mike Walls; Paul Lewis; R. Alexander Glenn; Randy Woolridge; Richard Melson; Schef Wright; Scott Boyd; vkaufman@kagmlaw.com  
**Subject:** e-filing (Dkt. No. 090079-E & 090145-EII)  
**Attachments:** 090079. Pension PAA protest july27.sversion.pdf

Electronic Filing

a. Person responsible for this electronic filing:

Charles J. Rehwinkel, Associate Public Counsel  
Office of Public Counsel  
c/o The Florida Legislature  
111 West Madison Street, Room 812  
Tallahassee, FL 32399-1400  
(850) 488-9330  
Beck.charles@leg.state.fl.us

b. Docket Nos. 090079-EI & 090145-EI

In re: Petition for increase in rates by Progress Energy Florida, Inc.

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.

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

d. There are a total of 7 pages.

e. The document attached for electronic filing is the Petition Protesting Portions of the Proposed Agency Action and Tariff Order No. PSC-09-0484-PAA-EI.

(See attached file: 090079.Pension PAA protest july 27.sversion.pdf)

Thank you for your attention and cooperation to this request.

Brenda S. Roberts  
Office of Public Counsel  
Telephone: (850) 488-9330  
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DOCUMENT NUMBER-DATE

07662 JUL 27 8

7/27/2009

FPSC-COMMISSION CLERK

**BEFORE THE PUBLIC SERVICE COMMISSION**

In Re: Petition for increase in rates by  
Progress Energy Florida, Inc.

Docket No. 090079-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

Filed: July 27, 2009

**PETITION PROTESTING PORTIONS OF**  
**THE PROPOSED AGENCY ACTION AND TARIFF**  
**ORDER NO. PSC-09-0484-PAA-EI**

The Citizens of the State of Florida ("Citizens") through the Office of Public Counsel, the Florida Industrial Power Users Group ("FIPUG"), the Attorney General, the Florida Retail Federation ("FRF"), and PCS Phosphate (collectively "Intervenors"), by and through undersigned counsel, pursuant to Section 120.57, F.S., and Rules 25-22.029 and 28-106.201, F.A.C., file this protest to portions of the Florida Public Service Commission's ("Commission") Order No. PSC-09-0484-PAA-EI, issued July 6, 2009 ("Order"). In that Order, the Commission approved, in part, PEF's request to create a regulatory asset and defer \$31.5 million of pension expense from 2009 for recovery or earnings review consideration in a future period. Intervenors do not protest the commission's action relating to storm hardening expense. In support of their Petition, Intervenors state as follows:

1. The name and address of the agency affected and the agency's file number:

Florida Public Service Commission  
2540 Shumard Oak Boulevard  
Tallahassee, Florida 32399-0850  
Docket Nos.: 090079-EI, 090144-EI

DOCUMENT NUMBER-DATE

07662 JUL 27 8

FPSC-COMMISSION CLERK

2. The Citizens include the customers of PEF whose substantial interests will be affected by the Order because the Order authorizes PEF to create a regulatory asset and defer 2009 pension costs in a manner that will impact earnings in future periods, thus adversely affecting rates and consumer bills. Additionally, Citizens of Florida who are customers of other utilities generally will be adversely affected by the erroneous precedent established.

3. FIPUG's participating companies are companies who take service from PEF. The FRF is a statewide organization with more than 9,000 members, many of whom are retail customers of PEF. As retail customers of PEF, the substantial interests of FIPUG's participating companies and many of the FRF's members will be affected by the Order because it permits PEF to create a regulatory asset and defer 2009 pension costs in a manner that will adversely impact future rates that will be paid by FIPUG companies and FRF members.

4. PCS Phosphate is a manufacturer of fertilizer products with plants and operations located within PEF's electric service territory.<sup>1</sup> PCS Phosphate receives service under various PEF rate schedules.

5. 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.

6. Pursuant to Section 350.11, F.S., the Citizens who file this Petition are represented by the Office of Public Counsel ("Citizens" or "OPC") with the following address and telephone number:

Office of Public Counsel c/o The Florida Legislature  
111 West Madison Street, Room 812  
Tallahassee, Florida 32399-1400  
Telephone No. : (850) 488-9330

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<sup>1</sup> The White Springs phosphate mining facilities are on approximately 100,000 acres (160 square miles) located in Hamilton County, Florida, and employs approximately 1,185 individuals.

7. FIPUG participating companies are represented by:

Jon C. Moyle, Jr.  
Vicki Gordon Kaufman  
Keefe Anchors Gordon & Moyle  
118 North Gadsden Street  
Tallahassee, Florida 32301  
Telephone No.: (850) 681-3828

John McWhirter, Jr.  
PO Box 3350  
Tampa, Fl 33601-3350  
Telephone No.: (813) 505-8055

8. Copies of all pleadings, notices, orders, discovery responses, and other documents filed in this proceeding should be served on the Florida Retail Federation's representatives as follows:

Robert Scheffel Wright  
John T. Lavia, III  
Young van Assenderp, P.A.  
225 South Adams Street, Suite 200  
Tallahassee, Florida 32301  
Telephone (850) 222-7206  
Facsimile (850) 561-6834

9. All pleadings, motions, orders and other documents directed to White Springs Agricultural Chemicals, Inc. d/b/a PCS Phosphate – White Springs should be served on:

James W. Brew  
F. Alvin Taylor  
Brickfield, Burchette, Ritts & Stone, P.C.  
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Washington, DC 20007-5201  
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ataylor@bbrslaw.com

10. Copies of all pleadings, motions, orders, and other documents filed in this proceeding should be served on the Attorney General's representatives as follows:

Cecilia Bradley  
Senior Assistant Attorney General  
Office of the Attorney General

11. Intervenors obtained a copy of the Order from the Commission's website on July 15, 2009.

12. At this time the disputed issues of material facts, including a concise statement of the ultimate facts alleged and those facts which Intervenors contend warrant reversal and/or modification of the agency's proposed action are set out below. Intervenors assert the Stipulation entered into and approved in Docket No. 050078-EI and Order No. PSC-05-0945-S-EI ("Stipulation") prohibits the deferral of the expenses from 2009 for consideration in a future period. Pursuant to Section 366.06(1), F.S., the Commission has the authority and obligation to determine and fix fair, just, and reasonable rates, including expense impacts that will affect rates in future periods.

13. Intervenors identify and protest the following fact, policy, and legal issues which are subject to dispute:

- a) Has PEF violated the terms of the Stipulation approved in Order No. PSC-05-0945-S-EI by seeking to create a regulatory asset and to defer pension expenses from a period covered year by the Stipulation in a future period?
- b) Whether the creation of a regulatory asset and deferral of pension expenses from a period covered by the Stipulation constitutes retroactive ratemaking?
- c) Whether PEF will double recover its deferred pension expenses deferred from a period covered by the Stipulation since revenue sharing is the exclusive mechanism for determining earnings for the Stipulation's duration?

14. Intervenors are entitled to relief pursuant to the Stipulation entered into and approved in Docket No. 050078-EI and Order No. PSC-05-0945-S-EI , Sections 120.57, 366.06(1), 366.04, and 366.05 F.S. and Rules 25-22.029 and 28-106.201, F.A.C

15. Intervenors request that the Commission set the Proposed Agency Action Order No. PSC-09-0484-PAA-EI, for hearing on PEF's proposal to create a regulatory asset and defer pension expense.

WHEREFORE, the Intervenors hereby protest and object to Commission Order No. PSC-09-0484-PAA-EI, as set forth above, and petition the Commission to conduct a formal evidentiary hearing on PEF's request to create a regulatory asset and defer pension expense, pursuant to Section 120.57(1), F.S.

Respectfully Submitted,

JR Kelly  
Public Counsel

s/ Charles J. Rehwinkel  
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d/b/a PCS Phosphate – White Springs

**DOCKET NO. 90145-EI**  
**DOCKET NO. 90079-EI**

**CERTIFICATE OF SERVICE**

I, **HEREBY CERTIFY** that a true and correct copy of the Office of Public Counsel's Petition Protesting Portions of the Proposed Agency Action had been furnished by electronic mail and U.S. Mail on this 27th day of July, 2009, to the following:

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