

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Petition for increase in rates by Progress Energy Florida, Inc.	DOCKET NO. 090079-EI
In re: Petition for limited proceeding to include Bartow repowering project in base rates, by Progress Energy Florida, Inc.	DOCKET NO. 090144-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 ORDER NO. PSC-09-0640-PCO-EI ISSUED: September 21, 2009

ORDER DENYING MOTION TO RESCHEDULE EVIDENTIARY HEARINGS
AND GRANTING, IN PART, OTHER RELIEF

BACKGROUND

On March 20, 2009, Progress Energy Florida, Inc. (PEF or Company) filed its Petition for Approval of a Permanent Rate Increase in Base Rates and Service Charges (Petition). In its Petition PEF requested approval of a permanent increase in base rates and service charges sufficient to generate additional total annual base revenues of approximately \$499 million. In support of this request, PEF provided a detailed forecast of its operations during 2010. On August 31, 2009, PEF filed a revised load and sales forecast as Exhibit JBC-9 to the rebuttal testimony of witness John Crisp, which shows lower sales during the projected test year compared to PEF's forecast filed at the time of the Minimum Filing Requirements (MFRs). In addition, PEF filed a revised Jurisdictional Separation Study, which corresponds with the revised forecast, as Exhibit WCS-12 to the rebuttal testimony of witness William Slusser. Finally, PEF filed the rebuttal testimony and exhibits of witness Peter Toomey addressing the impact on revenues of the revised studies.

On September 16, 2009, the Office of Public Counsel (OPC), the Attorney General's Office, the Florida Industrial Power Users Group (FIPUG), The Florida Retail Federation (FRF), and PCS Phosphate (collectively, Intervenors) filed a Motion to Reschedule Evidentiary Hearings or, in the Alternative, for Other Relief (Motion). In its Motion the Intervenors asserted that through the filing of the rebuttal testimony and exhibits described above, PEF effectively amended its request from an annual increase of \$499.997 million per year to an increase of \$593.237 million per year by filing a new load and energy forecast in rebuttal testimony. Intervenors further assert that this Commission cannot allow PEF to, in essence, amend its case for an additional \$94.8 million per year because to do otherwise would violate the Intervenors' due process rights to notice and an opportunity to be heard.

DOCUMENT NUMBER-DATE

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FPSC-COMMISSION CLERK

Moreover, the Intervenor's state that the consideration of the new forecasts would violate Section 120.57(1)(b), Florida Statutes (F.S.), which requires that all parties shall have the opportunity to respond, present evidence, and argument on all issues. In order to afford the Intervenor's with time to respond to the updated forecast information, the Intervenor's asserted that they should be allowed to engage in full discovery prior to filing their additional testimony in December 2009, and the Commission should reschedule evidentiary hearings for February 2010. In the alternative, if the Commission declines to change the schedule in this proceeding, Intervenor's have requested that the Commission strike all testimony by PEF claiming "additional revenue requirements."

On September 17, 2009, PEF filed its Response in Opposition to Intervenor's Motion to Reschedule Hearing or, in the Alternative, for Other Relief (Response). In its Response PEF asserted that it has explicitly and repeatedly stated unequivocally that it is not amending its original request of approximately \$499 million. PEF asserts that the sole purpose of filing the revised forecasts and rebuttal testimony and exhibits was to rebut testimony that the Intervenor's included in this proceeding regarding the impact of lower sales.

MOTION TO RESCHEDULE EVIDENTIARY HEARINGS
AND FOR OTHER RELIEF

I find the Intervenor's Motion unpersuasive on several grounds. First, PEF is not seeking more than \$499 million. This fact has been expressly stated in both PEF's rebuttal testimony¹ and the Company's positions taken in the Prehearing Order.² PEF's Response reiterates and re-affirms that PEF is not seeking any additional revenue beyond the \$499 million revenue increase contained in its Petition. Thus, since PEF is not seeking more than the \$499 million revenue increase contained in its Petition, PEF's filing of updated forecast information cannot constitute an amendment to its initial revenue request. Rather, the revised load and sales forecast information and studies were merely filed for the purposes of rebutting issues raised in the testimony of the Intervenor's regarding the impact of lower sales.

Intervenor's reliance upon Order No. 18335, issued October 22, 1987, in Docket No. 870239-WS, In re: Application of General Development Utilities, Inc., Silver Springs Shores Division, for increased water and sewer rates in Marion County, as support for their request to reschedule the evidentiary hearings is similarly unpersuasive as it is not applicable to the facts in the instant case. In General Development, the utility attempted to include in rate base a substantial item of plant which had existed since the date of the filing of its MFRs but which had been erroneously omitted from the utility's original filing. In addition, the utility subsequently sought to increase its revenue request above the amount contained in its initial petition. In

¹ See Pages 31-32 of the rebuttal testimony of Peter S. Toomey filed on August 31, 2009, stating in response to the question of whether PEF was proposing an increase to the initial rate request based on the updated forecasts "No, we are not."

² See Prehearing Order No. PSC-09-0638-PHO-EI, issued September 18, 2009, in Docket No. 090079-EI, In re: Petition for increase in rates by Progress Energy Florida, Inc. providing that "[d]espite this changed outlook [in the updated forecast], PEF is not seeking a revenue increase greater than the \$499 million contained in its original request." (Basic Position, page 8).

contrast, in the instant case PEF provided complete forecasts in its Petition and later provided updated load and sales forecasts in rebuttal to the testimony of one of the Intervenor's own witness. More importantly, unlike General Development, PEF has not amended the amount of revenue increase sought in its Petition.

Finally, the parties in this proceeding have been afforded with ample time to conduct discovery, file testimony, and review PEF's filings.³ Furthermore, due to the fact that the Commission's hearing calendar is extremely crowded, finding available dates which would allow the Commission to make a final decision within the statutory time period provided for in Section 366.06, F.S, would be exceedingly difficult at this time.

The Intervenor's alternative request to strike all testimony by PEF claiming "additional revenue requirements" resulting from the updated forecast information is similarly inappropriate. (Motion, page 6) As stated above, PEF is not seeking any additional revenue beyond the \$499 million revenue increase contained in its Petition. Rather, the revised load and sales forecast information and studies were merely filed for the purposes of rebutting issues raised in the testimony of the Intervenor's own witnesses regarding the impact of lower sales. In the interest of fairness to the parties, however, the revised load and sales forecast information and studies shall only be used to rebut issues raised in the testimony of the Intervenor's regarding the impact of lower sales and shall not be used to modify the original revenue request contained within the Company's Petition.

This Order is issued pursuant to the authority granted by Rule 28-106.211, Florida Administrative Code, which provides that the presiding officer before whom a case is pending may issue any orders necessary to effectuate discovery, prevent delay, and promote the just, speedy, and inexpensive determination of all aspects of the case. Consequently, I hereby deny the Intervenor's request to reschedule the evidentiary hearings and to strike the portions of PEF's rebuttal testimony pertaining to the revised load and sales forecast information and studies. I further hold, however, that the revised load and sales forecast information and studies shall only be used to rebut issues raised in the testimony of the Intervenor's regarding the impact of lower sales and shall not be used as the basis for claiming additional revenue requirements in this proceeding.

In consideration of the foregoing, it is

ORDERED that the Office of Public Counsel's, the Attorney General's Office's, the Florida Industrial Power Users Group's, The Florida Retail Federation's, and PCS Phosphate's Motion to Reschedule Evidentiary Hearings or, in the Alternative, for Other Relief is hereby denied in part as set forth above. It is further

³ Much of the information at issue in the Intervenor's Motion was provided to the parties well before the filing of rebuttal testimony on August 31, 2009. In particular, the revised jurisdictional study was furnished to the parties on June 19, 2009, as a supplemental response to OPC's Third Set of Interrogatories, No. 118. In addition, a discussion of the updated forecast was provided to the parties on June 22, 2009, in response to Staff's Eighth Set of Interrogatories, No. 118.

ORDERED that the revised load and sales forecast information and studies shall only be used to rebut issues raised in the testimony of the Intervenors regarding the impact of lower sales and shall not be used as the basis for claiming additional revenue requirements in this proceeding.

By ORDER of Commissioner Nathan A. Skop, as Prehearing Officer, this 21st day of September, 2009.



NATHAN A. SKOP
Commissioner and Prehearing Officer

(SEAL)

CMK

NOTICE OF FURTHER PROCEEDINGS OR JUDICIAL REVIEW

The Florida Public Service Commission is required by Section 120.569(1), Florida Statutes, to notify parties of any administrative hearing or judicial review of Commission orders that is available under Sections 120.57 or 120.68, Florida Statutes, as well as the procedures and time limits that apply. This notice should not be construed to mean all requests for an administrative hearing or judicial review will be granted or result in the relief sought.

Mediation may be available on a case-by-case basis. If mediation is conducted, it does not affect a substantially interested person's right to a hearing.

Any party adversely affected by this order, which is preliminary, procedural or intermediate in nature, may request: (1) reconsideration within 10 days pursuant to Rule 25-22.0376, Florida Administrative Code; or (2) judicial review by the Florida Supreme Court, in the case of an electric, gas or telephone utility, or the First District Court of Appeal, in the case of a water or wastewater utility. A motion for reconsideration shall be filed with the Office of Commission Clerk, in the form prescribed by Rule 25-22.0376, Florida Administrative Code. Judicial review of a preliminary, procedural or intermediate ruling or order is available if review of the final action will not provide an adequate remedy. Such review may be requested from the appropriate court, as described above, pursuant to Rule 9.100, Florida Rules of Appellate Procedure.