

Office of Commission Clerk Official Filing

Ruth Nettles

---

From: Costello, Jeanne [jcostello@carltonfields.com]  
 Sent: Monday, April 05, 2010 12:52 PM  
 To: Filings@psc.state.fl.us  
 Cc: sda@trippscott.com; larry.r.allen@navy.mil; cecilia.bradley@myfloridalegal.com; jbrew@bbrslaw.com; john.burnett@pgnmail.com; Khojasteh.Davoodi@navy.mil; Katherine Fleming; alex.glenn@pgnmail.com; vkaufman@kagmlaw.com; Curt Kiser; Caroline Klancke; John T. Lavia, III; paul.lewisjr@pgnmail.com; rick@rmelsonlaw.com; jmoyle@kagmlaw.com; Charles Rehwinkel; Erik Saylor; Stright, Lisa; ataylor@bbrslaw.com; audrey.VanDyke@navy.mil; Schef Wright; Keino Young; Triplett, Dianne; Walls, J. Michael; Huhta, Blaise N.; Bernier, Matthew R.  
 Subject: Filing Docket 090079-EI

Attachments: PEF Motion to Strike and Response to Citizen's Cross-Motion for Reconsideration.pdf



PEF Motion to Strike and Respo.

<<PEF Motion to Strike and Response to Citizen's Cross-Motion for Reconsideration.pdf>>

Dockets: 090079, 090144; 090145 In re: Petition for increase in rates by Progress Energy Florida, Inc.; In re: Petition for limited proceeding to include Bartow repowering project in base rates by Progress Energy Florida, Inc.; and 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.

1. Document to be filed is Progress Energy Florida, Inc.'s Motion to Strike Citizens' Cross-Motion for Reconsideration and Response to Citizen's Cross-Motion for Reconsideration including Exhibits A and B [19 pages].
2. This document is being filed on behalf of Progress Energy Florida, Inc.
3. This document is being filed by

Jeanne Costello on behalf of Mike Walls Carlton Fields, P.A.  
 4221 W. Boy Scout Boulevard, Suite 1000  
 Tampa, Florida 33607-5780  
 direct 813.229.4917  
 fax 813.229.4133  
 jcostello@carltonfields.com  
 www.carltonfields.com

DOCUMENT NUMBER-DATE

02488 APR -5 e

FPSC-COMMISSION CLERK

**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

Filed: April 5, 2010

**PROGRESS ENERGY FLORIDA INC.'S  
MOTION TO STRIKE CITIZENS' CROSS-MOTION FOR RECONSIDERATION AND  
RESPONSE TO CITIZEN'S CROSS-MOTION FOR RECONSIDERATION**

Progress Energy Florida, Inc. ("PEF or the "Company") hereby moves the Florida Public Service Commission ("PSC" or "Commission) to strike Citizen's Cross-Motion for Reconsideration on the grounds that it was untimely filed. In the alternative, PEF submits its response in opposition to the Cross-Motion.

**Motion to Strike**

PEF filed and served its Motion for Reconsideration on March 18, 2010. The Commission's rules require that a response to a motion for reconsideration or a cross motion for reconsideration shall be served within seven days of service of the motion for reconsideration to which the response or cross motion is directed. Rule 25-22.060(3), *Florida Administrative Code*. Any response or cross motion was therefore due no later than March 25, 2010.

By e-mail dated March 23, 2010 (attached as Exhibit A), PEF agreed to extend the time for filing replies to its Motion for Reconsideration until March 29, 2010. PEF did **not** agree to

extend the time for filing any cross motions for reconsideration. Citizens' Cross-Motion was filed and served together with its response to PEF's Motion for Reconsideration in a single pleading on March 29, 2010. The response contained in this pleading was timely filed pursuant to PEF's agreed extension; the cross-motion in this pleading was filed four days out of time.

Even if PEF had desired to extend the time for Citizens to file a cross motion for reconsideration – which it did not – PEF could not have done so. The Commission has recognized that even it does not have the authority to extend the time for filing a motion for reconsideration:<sup>1</sup>

Rule 25-22.060(3)(a), *Florida Administrative Code*, requires that a motion for reconsideration of a final order shall be filed within fifteen days after the issuance of the order. We believe that granting Mr. Dyer an opportunity to file a revised motion for reconsideration would, in effect, extend the period provided in the rule for filing a motion for reconsideration. Florida courts have held that a state agency cannot extend the time for filing a motion for reconsideration beyond the time set forth in its rules. See *City of Hollywood v. Public Employees Relations Commission*, 432 So.2d 79 (Fla. 4<sup>th</sup> DCA 1983).

Similarly:<sup>2</sup>

We believe that GNAP's pleading is akin to its own Motion for Reconsideration and since we are without jurisdiction to extend the time for filing a Motion for Reconsideration, the pleading shall be stricken. See *City of Hollywood v. Public Employees Relations Commission*, 432 So.2d 79 (Fla. 4<sup>th</sup> DCA 1983) and *Citizens of the State of Florida v. North Fort Meyers Utility, Inc. and Florida Public Service Commission*, Case No. 95-1439 (Fla. 1<sup>st</sup> DCA, November 16, 1995).

The rationale of those orders is equally applicable to cross motions for reconsideration.

The Commission should therefore strike the portions of Citizens' March 29 pleading that

---

<sup>1</sup> *In re: Application for a rate increase in Brevard County by Florida Cities Water Company*, Order No. PSC-96-1456-FOF-WS, issued December 2, 1996 in Docket No. 951258-WS, at 4-5.

<sup>2</sup> *In re: Investigation into appropriate methods to compensate carriers for exchange of traffic*, Order No. PSC-03-0059-FOF-TP issued January 8, 2003 in Docket No. 000075-TP, at 24.

comprise or relate to its Cross-Motion. Those portions of the pleading are identified on Exhibit B.

**WHEREFORE**, PEF moves the Commission to strike, as untimely, the portions of Citizens' March 29 pleading that comprise or relate to Citizens' Cross-Motion for Reconsideration as more fully identified on Exhibit B.

**Response to Cross-Motion**

In the event the Commission determines that it should consider Citizens' ("OPC's") untimely Cross-Motion, that motion must be denied.

OPC contends that the Commission erred, as a matter of law, in determining that the base rate revenue increase associated with the Bartow Repowering Project ("Bartow") was approved prior to and outside of its final decision at the January 11, 2010 agenda conference in the consolidated rate case/Bartow dockets that is reflected in the Final Order. (Cross-Motion at 2). OPC is wrong. The Commission made no such determination. Instead, the revenue requirement related to Bartow was treated throughout the Final Order in the same manner as all other components of PEF's revenue requirement and it was, therefore, decided as part of the Commission's Final Order. Because the Commission did not do what OPC says it did there is no error of law or fact for the Commission to decide on reconsideration. OPC's Cross-Motion must, therefore, be denied.

Because the Commission did not commit the error OPC says it did, OPC's arguments are fundamentally flawed. Specifically, OPC (1) incorrectly applies the *Wilson*<sup>3</sup> principles to the facts of this case; (2) misapprehends the Commission decision and confuses revenues and revenue requirements; (3) ignores the Commission's intention at the time of its decision and in

---

<sup>3</sup> *Citizens v. Wilson*, 568 So.2d 904 (Fla. 1990).

the Final Order to approve as final the temporary rates (including Bartow) that were in effect at the time of its vote; and (4) improperly attempts to reargue the Commission's decision on the appropriate amortization of the theoretical depreciation reserve surplus. There is no error of law and no matter that the Commission overlooked. OPC's Cross-Motion must be denied.

**I. The Commission's Final Decision and Final Order Included Bartow and Was Not Decided Separate and Apart from the Final Decision and Order.**

In its rate case petition, PEF requested a \$499 million annual rate increase based on a 2010 test year. A portion of that increase was related to Bartow, which will be in service throughout the test year. Because Bartow in fact was placed in service during 2009, PEF also filed a tariff and limited proceeding petition to allow it (pursuant to the settlement agreement in its last rate case) to recover the capital and operating costs of Bartow beginning on the project's in-service date. The Commission entered a combination PAA/tariff order (Order No. PSC-09-0415-PAA-EI) approving PEF's tariff filing and authorizing PEF to collect \$126.2 million of additional annual revenues beginning on Bartow's in-service date. This rate increase was subject to refund:

pending a review and final determination of the appropriate calculation of the Bartow Repowering Project revenue requirements in PEF's base rate proceeding in Docket No. 090079-EI.

Order PSC-09-0415-PAA-EI at 10.

To facilitate this review and determination, the Bartow docket was consolidated with the rate case.

OPC and other intervenors protested Order No. PSC-09-0415-PAA-EI.<sup>4</sup> Their protest raised both factual issues (e.g. were the Bartow costs, including the cost of money, reasonable and prudently incurred) and legal issues (e.g. did the prior rate case settlement allow rates to be increased for Bartow during 2009). Despite their protest, the only factual issues identified by OPC and the other intervenors with respect to Bartow for hearing in the consolidated proceeding were the appropriate life span for Bartow and other combined cycle plants and the reasonableness of PEF's generation O&M expense for Bartow. Similarly, with the exception of these two items, no party other than PEF presented any testimony specific to the Bartow project.

At the final hearing, OPC entered a stipulation on Issue 25 that preserved OPC's right to challenge the legality of including Bartow in rates during 2009, but effectively abandoned any challenge to the reasonableness and prudence of Bartow's capital costs:

**Issue 25:** Should any adjustments be made to rate base related to the Bartow Repowering Project? (Category 1 Stipulation)

**Approved Stipulation:** No. This stipulation does not prejudice the rights of any intervenor to contest the legality of including the Bartow project in rates during 2009. The new rates resulting from Docket No. 090079-EI, which will reflect the rate base and revenue requirement impact of the Bartow project, will supercede the rate change resulting from Order No. PSC-09-0415-PAA-EI as of the effective date of the new rates. (AFFIRM and NAVY did not affirmatively stipulate to this issue, and took no position.)

Final Order at 167.

OPC agrees this stipulation "reflected the agreement of the parties to include the revenue requirement impact of Bartow in consideration in the overall rate case revenue requirements and in the final determination of rates." (Cross-Motion, p. 2). The Commission did not conclude "otherwise," as OPC apparently contends, rather the Commission agreed to the inclusion of the

---

<sup>4</sup> OPC appears to emphasize the PAA language of the order but acknowledges the approval of the tariff filed with that petition required the implementation of the tariff rates pending a hearing under Wilson. OPC's reliance on the PPA language in the order by its own admission is therefore irrelevant.

revenue requirement impact for Bartow in consideration in the overall rate case revenue requirements and in the final determination of rates when the Commission approved this stipulation, see Final Order, p. 4, and incorporated this stipulation as part of its Final Order, see Final Order, pp. 66, 151.

Moreover, the stipulation on Issue 25 disposed of only one factor in the calculation of the Bartow revenue requirement, namely the amount to be included in rate base. Other factors in that calculation were resolved in other rate case issues that were decided by the Commission in its final decision and Final Order. For example:

- The life span to be used as a starting point for calculating Bartow-related depreciation expense was addressed at pages 16-20 of the Final Order, where the Commission rejected PEF's proposed 30-year life span and adopted a 35-year life span.
- The fossil dismantlement accrual for all PEF plants, including Bartow, was addressed at pages 56-62, and the specific accrual for Bartow was established on page 61.
- The generation O&M expense related to Bartow was addressed at page 119, where the Commission found that the cost for Bartow's long term service agreement (LTSA) was reasonable.
- The capital structure and cost of capital that affect the Bartow revenue requirement were established by the Commission on a Company-wide basis with its final decision in the Final Order.

Contrary to OPC's assertion (Cross-Motion at p.2), then, the Commission did not establish "separate and apart" customer rates for Bartow. No project-specific revenue requirement for Bartow is identified in the Final Order. Instead, the costs associated with Bartow are simply part of the overall revenue requirement established by the Commission for PEF as a whole, and the

Bartow costs were treated in the same manner as any other item of production plant in the Commission's decision reflected in the Final Order.

**A. The Commission Correctly Followed the Requirements of *Wilson*.**

The treatment of Bartow in both Order No. PSC-09-0415-PAA-EI and the Final Order is fully consistent with the Florida Supreme Court's decision in *Citizens v. Wilson*, 568 So.2d 904 (Fla. 1990). Under *Wilson*, a Commission order approving a tariff must afford an opportunity for a hearing before the tariff becomes final. That opportunity was clearly afforded in this case.

Order No. PSC-09-0415-PAA-EI provided at pages 10-11:

ORDERED that the \$126,212,000 annual base rate increase shall be held subject to refund pending a review and final determination of the appropriate calculation of the Bartow Repowering Project revenue requirements in PEF's base rate proceeding in Docket No. 090079-EI. It is further

\* \* \*

ORDERED that the tariff shall remain in effect with any revenues being held subject to refund, pending review in the base rate proceeding in Docket No. 090079-EI.

In compliance with *Wilson*, this order recognized the rates as temporary, pending the opportunity for hearing as part of the rate case.

The hearing required by *Wilson* was held. All parties had an opportunity to offer issues and testimony with respect to Bartow. As explained above, the parties stipulated to the inclusion of Bartow in rate base at the hearing but they did offer evidence on or contest PEF's evidence on other issues related to the revenue requirements for Bartow and other plant as part of the consolidated final hearing. The requirements of *Wilson*, therefore, were met.

**B. OPC Misapprehends the Commission's Decision and Confuses Revenues with Revenue Requirements.**



To establish the amount of any rate increase or decrease, the Commission must calculate the difference between a utility's test year revenue requirement and the amount of revenues that will be produced during the test year by the rates currently in effect. In light of the temporary base rate increase granted in Order No. PSC-09-0415-PAA-EI, there were two equally valid ways for the Commission to approach this calculation:

- The Commission could ignore the temporary base rate increase and calculate test year revenues based on the rates in effect at the beginning of 2009. This was the method used by PEF in its MFRs. This method calculates the amount of any required increase or decrease compared to the rates in effect prior to the temporary Bartow base rate increase.
- Alternatively, the Commission could take into account the effect of the temporary Bartow base rate increase and calculate test year revenues based on the rates in effect at the time of its vote.

The second method, which calculates the amount of any required increase or decrease compared to the rates being paid by customers at the date of the Commission vote, was the one adopted by the Commission in its decision on Issue 88. As the Commission said at page 134 of the Final Order:

We believe PEF did not correctly calculate revenues at current rates for the projected test year. The initial revenue requirement calculations submitted in MFR Schedule E-13c excluded revenues received from the Bartow Repowering Project (BRP), which went into base rates on July 1, 2009.

\*\*\*

We hereby find that revenues at current rates for the projected test year shall be increased ... by \$132,101,000, to account for the Bartow Repowering Project base rate increase approved by us in Order No. PSC-09-0415-PAA-EI, issued June 12, 2009 in Docket No. 090144-EI.

Either method produces the same end result. The final approved rates will be exactly the same and will be designed to recover the same newly approved test year revenue requirement. The only difference is the point of reference for *describing* the amount of the increase: either the rates currently being paid by customers on a temporary basis, or the rates paid by customers at a point of time in the past. The fact that the Commission chose to use the rates currently being paid by customers as a basis for comparison does not indicate that the Commission regarded the temporary base rate increase as preapproved or permanent.

OPC misapprehends the Commission's decision in two ways. First, OPC refers to \$132,101,000 as the Bartow revenue requirement. (Cross-Motion, p. 3, n. 1). It is not. The \$132 million is the incremental revenue that the temporary rates approved in Order No. PSC-09-0415-PAA-EI are projected to produce during 2010 based on the sales forecast approved by the Commission. This amount may be either more or less than the final 2010 revenue requirement related to Bartow. As discussed above, the Commission did not calculate a final Bartow-specific revenue requirement; it included the effect of Bartow in the calculation of total revenue requirement in the same manner as it included any other item of production plant.

Second, OPC erroneously concludes that the Commission regarded the \$132 million of revenues associated with the temporary rates as a final entitlement that had been approved outside the final hearing and before its agenda conference on January 11, 2010, saying:

...it was error for the Commission to have treated the \$132 million Bartow Interim Rate Increase as having been authorized outside of the determination in Docket No. 090079-EI and the specific vote on January 11, 2010.

Cross-Motion at p. 7.

Bartow was not approved outside the hearing in Docket No. 090079-EI or the Commission's vote on the evidence presented at that hearing and the Final Order. As explained above, Bartow

was treated for ratemaking purposes in the same manner as all other production plant. If the Commission had treated the Bartow revenue requirement as “having been authorized outside of ... the specific vote on January 11, 2010,” as OPC claims, then, the Commission would have excluded all Bartow-related items from the rate case decision. The Commission did not do this in its final decision and Final Order. The Commission in fact ruled on the life span of the Bartow units, the dismantlement provision for the units, and the O&M expenses for the units, among other issues affecting Bartow and all other plant, in its vote and in its Final Order. Further, if the Bartow revenue requirement was preapproved, as OPC claims, it was unnecessary for the Commission to consider and approve the stipulation on Issue 25 establishing the Bartow capital cost to be included in rate base at the hearing, but the Commission did approve this stipulation and incorporated it in its Final Order. OPC’s stipulation to Issue 25 and its presentation of testimony on Bartow life spans and O&M expenses further belies its contention that there was a so-called “ ‘separate and apart’ establishment of customer rates for Bartow.” Instead, the Commission did exactly what OPC says it should have done and “include[d] the revenue requirement impact of Bartow in consideration in the overall rate case revenue requirements and in the final determination of rates.” (Cross-Motion at p. 2).

Finally, after the hearing in the consolidated cases the Commission entered its Final Order which:

**ORDERED**, that the revised rates and charges shall become effective for meter readings made on or after February 10, 2010.

Final Order at 151.

Order No. PSC-09-0415-PAA-EI thus authorized the collection of temporary increased rates related to Bartow beginning on the effective date of that order and continuing through meter readings on February 9, 2010. Consistent with the stipulation of Issue 25, the Final Order

superseded Order No. PSC-09-0415-PAA-EI and authorized the collection of permanent increased rates based on the resolution of all issues in the rate case – including the stipulated rate base issue related to Bartow – beginning with February 10, 2010 meter readings. The fact that the Commission determined, based on the total record, that the final rates should include no increase over the temporary rates is not evidence of any Commission determination that Order No. PSC-09-0415-PAA-EI was final prior to the Commission vote on January 11, 2010.

**C. The Final Order Correctly Reflects the Commission’s Intention to Approve as Final the Rates in Effect at the Time of Its Vote**

One of the major issues in the rate case was the extent to which the theoretical depreciation reserve surplus should be amortized to reduce customer rates. The Commission ultimately engaged in a decision-making process that was designed to produce a “zero rate increase” compared to the amount that customers were actually paying on the date of the Commission’s vote.

OPC ignores in its Cross-Motion what the Commission did and plays games with the words, arguing that the Commissioners did not understand that to accomplish a “zero rate increase” they would need to amortize an additional \$126.2 million annually to offset the temporary base rate increase related to Bartow and that they had the authority to do so. This is simply a game of semantics – was the Commission’s intent to ensure a zero increase compared to rates currently being paid by customers, or a zero increase compared to rates in effect prior to the Bartow project coming into service? The record demonstrates that it was the former.

The Commissioners understood that by approving a “zero increase” compared to current rates, they were in fact approving an additional \$126,212,000 million compared to the rates in effect prior to Order No. PSC-09-0415-PAA-EI.

- Schedule 5 to the original staff recommendation showed that staff proposed an increase of \$48 million over rates currently paid by customers, or a total base rate increase of \$174 million over pre-Bartow rates.
- After the Commission voted on all revenue requirement issues except amortization of the theoretical reserve surplus, the staff prepared a Revised Schedule 5 which showed a proposed increase of \$5.8 million over rates *currently* paid by customers, to which it noted that \$126.2 million should be added to determine the total base rate increase.
- In the discussion of the Revised Schedule 5, both Commissioner Stevens and Commissioner Skop sought and received confirmation that the \$5.8 million incremental increase was in addition to the amount for Bartow currently being collected through base rates. (Special Agenda Transcript at pp. 218-219)

With this information, the Commission voted to amortize a sufficient amount of the theoretical depreciation reserve surplus to zero out the \$5.8 million incremental revenue requirement, and ensure that customer rates would remain unchanged *from the level then in effect*.

Balancing the need to correct the reserve surplus with concerns regarding reduced cash flow and financial integrity, we find that \$23 million of the reserve surplus shall be amortized over four years in the annual amount of \$5,840,613, thereby bringing the increase in annual revenue requirement to zero.

Final Order at 52.

As shown in the notes to Schedule 5 of the Final Order, the Commission recognized that this “zero rate increase” actually represented a \$126,212,000 increase over the rates in effect at the time the rate case petition was filed.

Further, during the discussion of Issue 50, Commissioner Skop emphasized the Commission's practice of allowing recovery of prudently incurred costs for generating plants:

**Commissioner Skop:** With respect to the Bartow project, I believe pursuant to the settlement agreement, the 2005 settlement agreement, Progress was allowed to increase base rates for the Bartow repowering commensurate with that plant coming into service. It's my understanding that the plant came into service earlier. Actually, it's not 2009 anymore, but it came into service in 2009, in which case Progress came in, and those rates were incorporated pursuant to the settlement agreement; is that correct?

**Mr. Wright:** That's correct.

\*\*\*

**Commissioner Skop:** And the Commission to your knowledge has never denied reasonably and prudently incurred costs associated with a generating asset that the Commission has approved to be placed in service; is that correct?

**Mr. Wright:** That's correct.

Special Agenda Transcript at 163-164.

Thus the record, as a whole, shows the Commission's intent that the costs of the Bartow project should be recovered through the final approved rates. It also shows the Commission understood that it was giving final approval to a \$126.2 million increase over the rates in effect at the time the rate case petition was filed in March, 2009.

The Commission did not, as OPC contends, determine that "the revenue requirement associated with the Bartow interim rates constituted a new 'floor' for purposes of determining a revenue requirement increase and/or making a determination about what, if any, revenue requirement should be offset by debiting the depreciation reserve and crediting depreciation expense." (Cross-Motion at 3) During the discussion at the agenda conference, the Commissioners considered, but ultimately rejected, offsetting additional revenue requirements in

order to produce a decrease in the current rates to customers below OPC's so-called "floor". As Commissioner Skop explained his consideration of the issue:

[B]efore we got into the ROE discussion, I was comfortable going up to, you know, possibly half of the surplus. But I think that once you start digging into it and there's really not a whole lot of need that I see to possibly do that now, but if you dig deep now I think you start risking credit downgrades and other bad things. And I think that it's sufficient to hold rates constant or to have rates slightly less than what they are today. I think that is a good happy medium.  
Special Agenda Transcript at 225.

This discussion shows that the Commission clearly believed it had the authority to apply the reserve surplus to reduce rates below the level established on a temporary basis in Order No. PSC-09-0415-PAA-EI; but it decided to keep rates at, but not below, that level.

**D. OPC'S Cross-Motion is a Disguised Attempt to Reargue the Commission's Decision to Consider the Financial Impact on PEF in Determining the Appropriate Amortization of the Theoretical Reserve Surplus**

In reaching its decision on the amount of the theoretical reserve surplus that should be amortized and used to reduce rates, the Commission considered a number of factors, including: the total amount of the surplus, questions of intergenerational equity, previous Commission orders regarding reserve imbalances, the application of Generally Accepted Accounting Principles (GAAP), and the impact on PEF's financial integrity. (Final Order at pp. 45-52) Balancing these concerns, the Commission decided to amortize \$23 million of the surplus over four years in order to avoid any change in current customer rates.<sup>5</sup> The remaining \$667 million is to be recovered through remaining life rate design. (Final Order at p. 52).

By suggesting that the Commission erred in determining that the temporary Bartow increase was in fact permanent, OPC invites the Commission to find that a "zero rate increase"

---

<sup>5</sup> PEF disagrees with the Commission's decision to amortize any portion of the surplus, but has not sought reconsideration of that decision.

would require a \$126.2 million reduction in current rates, and that this reduction could be accomplished by increasing the amortization of the theoretical reserve surplus. This is a poorly disguised re-argument of the Commission's decision on the amortization of the surplus and is an improper basis for reconsideration. OPC presents nothing that the Commission overlooked or failed to consider in determining that \$23 million was the appropriate amount to amortize when all factors, including cash flow and financial integrity concerns, are taken into account.

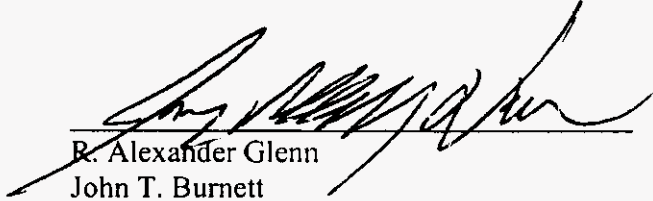
### **Conclusion**

OPC has failed to identify any error of fact or law, or any matter that the Commission overlooked or failed to consider. OPC's Cross Motion claims that the Commission determined that the rates established by Order No. PSC-09-0415-PAA-EI were final prior to its January 11, 2010 agenda conference and Final Order. This is simply not true. The Commission understood that the effect of its decision was to approve the continuation of customer rates at their then-current level based on the entire record in the consolidated dockets. That record included the Commission's approval of the parties' stipulation that the revenue requirement impact of Bartow should be included in consideration in the overall rate case revenue requirements in the final determination of rates. It also included the Commission's decisions treating Bartow for ratemaking purposes in the same manner as all other production plant in determining the life span of the Bartow units, the dismantlement provision for the units, the O&M expense for the units, and other issues affecting Bartow and all other plant in its decision and Final Order. The standards for reconsideration have not been met, and the Cross-Motion should be denied.

**WHEREFORE**, in the event the Commission denies the Motion to Strike and proceeds to consider the merits of OPC's Cross-Motion, that motion should be denied for all of the reasons discussed above.



**RESPECTFULLY SUBMITTED** this 5<sup>th</sup> day of April, 2010.



R. Alexander Glenn

John T. Burnett

PROGRESS ENERGY SERVICE COMPANY, LLC

Post Office Box 14042

St. Petersburg, FL 33733-4042

Telephone: (727) 820-5587

Facsimile: (727) 820-5519

James Michael Walls

Florida Bar No. 0706242

Blaise N. Huhta

Florida Bar No. 0027942

CARLTON FIELDS, P.A.

4421 W. Boy Scout Blvd.

Ste. 1000 (33607)

Post Office Box 3239

Tampa, FL 33601-3239

Telephone: (813) 223-7000

Facsimile: (813) 229-4133

Richard D. Melson

Florida Bar No. 0201243

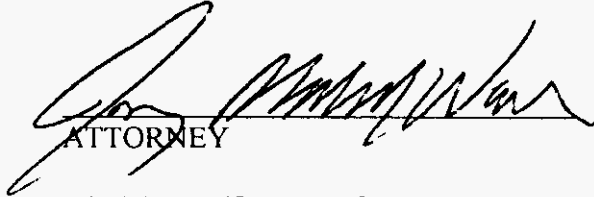
705 Piedmont Dr

Tallahassee, FL 32312

Telephone: (850) 894-1351

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that a true and correct copy of the foregoing has been served via electronic and U.S. Mail to the following counsel of record as indicated below on this 5<sup>th</sup> day of April, 2010.



ATTORNEY

KATHERINE FLEMING  
Staff Counsel  
Florida Public Service Commission  
2540 Shumard Oak Blvd  
Tallahassee, FL 32399

J.R. KELLY/CHARLES REHWINKLE  
Office of the Public Counsel  
c/o The Florida Legislature  
111 W. Madison Street – Room 812  
Tallahassee, FL 32399-1400

BILL MCCOLLUM/CECILIA BRADLEY  
Office of the Attorney General  
The Capitol – PL01  
Tallahassee, FL 32399-1050

VICKI G. KAUFMAN/JON C. MOYLE, JR.  
Keefe Law Firm, The Perkins House  
118 North Gadsden Street  
Tallahassee, FL 32301

JAMES W. BREW/ALVIN TAYLOR  
Brickfield Law Firm  
1025 Thomas Jefferson Street, NW, 8<sup>th</sup> Fl  
Washington, D.C. 20007

R. SCHEFFEL WRIGHT / JOHN T. LAVIA  
Young Law Firm  
225 South Adams Street, Stc. 200  
Tallahassee, FL 32301

KAY DAVOODI  
Director, Utility Rates and Studies Office  
Naval Facilities Engineering Command  
1322 Patterson Avenue SE  
Washington Navy Yard, DC 20374-5065

AUDREY VAN DYKE  
Litigation Headquarters  
Naval Facilities Engineering Command  
720 Kennon Street, S.E. Bldg 36, Room 136  
Washington Navy Yard, DC 20374-5065

STEPHANIE ALEXANDER  
Tripp Scott, P.A.  
200 West College Avenue, Suite 216  
Tallahassee, Florida 32301

Docket No. 0900079  
Progress Energy Florida's Motion to Strike Citizens' Cross-Motion for Reconsideration and  
Response to Citizen's Cross-Motion for Reconsideration  
**Exhibit A**

**From:** Glenn, Alex [mailto:Alex.Glenn@pgnmail.com]  
**Sent:** Tuesday, March 23, 2010 5:30 PM  
**To:** REHWINKEL.CHARLES; jbrew@bbrslaw.com; jmoyle@kagmlaw.com;  
vkaufman@kagmlaw.com; Captain Shayla McNeill ; Schef Wright; KELLY.JR;  
BECK.CHARLES; 'Khojasteh.Davoodi@navy.mil'; 'Audrey.VanDyke@navy.mil';  
'cecilia.bradley@myfloridalegal.com'; 'sda@trippscott.com'; 'dmoore@esgconsult.com';  
'trish.conners@myfloridalegal.com'  
**Cc:** Walls, J. Michael; Burnett, John  
**Subject:** Docket No. 090079-EI

March 23, 2010

All:

PEF will agree to an extension until Monday, March 29, 2010 to file your replies to PEF's motion for reconsideration in Docket No. 090079-EI. Call me if you have any questions. Thanks.

Alex

Docket No. 0900079  
Progress Energy Florida's Motion to Strike Citizens' Cross-Motion for Reconsideration and  
Response to Citizen's Cross-Motion for Reconsideration  
**Exhibit B**

The following portions of Citizens' Cross-Motion for Reconsideration and Response to Progress Energy's Motion for Reconsideration should be stricken because they comprise or refer to its untimely cross motion rather than to its timely response to PEF's motion:

- Under the heading "Summary of Arguments," strike everything from the top of page 2 through the first two lines on page 3.
- Under the heading "Cross-Motion," strike everything in this section from the middle of page 3 through the middle of page 9.
- Under the heading "Response to PEF's Motion for Reconsideration," in the first sentence of the first full paragraph on page 10: strike everything after the words "January 11, 2010."
- Under the heading "Conclusion," strike everything in this section from the bottom of page 10 through the top of page 11.