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**Sent:** Friday, August 05, 2011 1:14 PM  
**To:** Filings@psc.state.fl.us  
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**Subject:** CITIZENS' OBJECTION TO PEF'S SCHEDULING MOTION  
**Attachments:** Citizens' Objection to PEF's Scheduling Motion.pdf

Electronic Filing

a. Person responsible for this electronic filing:

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b. Docket No. 100437-EI

In re: Examination of the outage and replacement fuel/power costs associated with the CR3 steam generator replacement project, by Progress Energy Florida, Inc.

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

d. There are a total of 8 pages.

e. The document attached for electronic filing is **CITIZENS' OBJECTION TO PEF'S SCHEDULING MOTION**

Thank you for your attention and cooperation to this request.

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**BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION**

In re: Examination of the outage and replacement fuel/power costs associated with the CR3 steam generator replacement project, by Progress Energy Florida, Inc.

DOCKET NO.: 100437-EI

FILED: August 05, 2011

**CITIZENS' OBJECTION TO PEF'S SCHEDULING MOTION**

The Citizens of Florida, through the Office of Public Counsel ("OPC" or "Citizens"), file this response in opposition to Progress Energy Florida's ("PEF") Second Motion to Establish Case Schedule as follows:

1. PEF has filed a request for an expedited hearing schedule with no rationale stated as to why the Commission should depart from the hearing schedule the Company requested on December 3, 2010 and that the Prehearing Officer established by Order No. PSC-11-0108-PCO-EI, issued February 8, 2011. PEF's proposed expedited schedule is unacceptable for this incredibly technical, complex, \$1 billion case. The PEF request should be rejected as unfairly prejudicial and inconsistent with fundamental notions of due process guaranteed by Chapter 120, Fla.Stat. The OPC also objects to any non-fact based decision that would prematurely and prejudicially separate connected aspects of the case at this time in a way that could limit intervenors from advancing reasonable and plausible theories of their case(s) in accordance with the provisions of Section 120.57, Fla. Stat..

2. On December 3, 2010, PEF filed its first motion to establish a case schedule. In it, PEF requested the following schedule:

60 days after return to service	PEF files petition and direct testimony
180 days after return to service	Intervenor testimony

210 days after return to service	Staff testimony
240 days after return to service	Rebuttal testimony
270 days after return to service	CR3 hearing

After hearing from the Parties, the Prehearing Officer established the schedule contingent upon PEF reporting the status of its attempted repair to the delamination discovered on October 2, 2009. In Order No. PSC-11-0108-PCO-EI, issued February 8, 2011, the Prehearing Office stated that:

In the event CR3 returns to operation on or before March 31, 2011<sup>1</sup>, the Parties shall adhere to the following schedule:

60 days after return to service	PEF files petition and direct testimony
180 days after return to service	Intervenor testimony
210 days after return to service	Staff testimony
240 days after return to service	Rebuttal testimony

In its Second Scheduling Motion, PEF now seeks to short-circuit the entire process with its request to compress the entire hearing preparation time into 180 days. This is the time which was originally allocated by the Prehearing Officer solely to Intervenors for their case preparation. PEF's suggestion is unreasonable under the circumstances where two delaminations have been discovered to a nuclear reactor containment building. These events are unprecedented in the world. The number and stature of the engineering and construction experts that have been, and are still, working on this matter attest to the highly complex and complicated once-in-the-world engineering issues that are at issue in this case. A shortened and rushed hearing cannot provide due process to the Citizens and would thus be prejudicial under the circumstances.

3. Due to the additional delamination discovered on March 14, 2011, the nature of

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<sup>1</sup> CR3 did not return to service on March 31, 2011, due to the failure of the repair effort. This repair failure did not change the underlying rationale for the Commission-ordered schedule. If anything it caused even more reason for caution and care in addressing the totality of events in this matter. [Footnote added]

this docket transformed from that of a January 24, 2011 status conference where PEF was optimistic about returning CR3 to service on April 20, 2011 to an intense series of events – wholly outside the influence of the non-PEF parties – surrounding PEF making a decision of whether to retire or attempt another repair to the plant. The still-tentative decision that PEF would attempt another repair was not even announced to the world until June 27, 2011. To date, there are open questions about whether CR3 will be successfully repaired and licensed and will return to service by 2014, if ever. Along the way the parties have engaged in a series of good faith discussions about the scope and schedule of this matter. The non-PEF parties did not in any way delay the ability of this matter to go to hearing as a result of engaging in discussions in an effort to understand the events outside of their control. The substantial uncertainty about the future of the plant made quick establishment of a hearing process unneeded during that time. Nothing the intervenors have done has created a basis for truncating and accelerating the schedule as PEF proposes.

4. The OPC has also engaged actively in procedural discussions with the parties and in discovery about the interaction of the delamination with the NCRC docket. These discussions did not cause delay in the delamination docket. In every meeting that has occurred since the initial conference, the OPC has indicated its ability to meet the schedule established by Commission Order No. PSC-11-0108-PCO-EI. The OPC stands ready to proceed on the established schedule as long as there is continued cooperation from PEF as it relates to discovery and sufficient access to all of the information – including PEF employees and retirees and contractors -- necessary for a complete and factual decision in this matter. Having said this, the OPC notes that PEF's efforts at this

late juncture to have the Commission accelerate the schedule and the OPC suggests that the Company's proposed ability to file their own direct testimony in only 30 days, even though the issues aren't established, should give additional reason for the Commission to wonder why acceleration is being sought. Accordingly, the OPC now suggests that, in light of PEF's efforts to rush things and due to the enormous complexities surrounding this prudence/negligence case as well as the magnitude of possible customer-borne damages flowing from PEF's decisions, there should be more consideration given to *lengthening* the prehearing schedule in order to accommodate surrebuttal in the event that PEF's initial, direct testimony is skeletal in nature and the real case is filed on rebuttal. For these reasons, Citizens urge that any schedule that is established be designated as tentative. The OPC's initial review of the information provided by PEF has indicated that there will be need for highly sophisticated civil engineering testimony from specialists in structural engineering, containment structures and material sciences. These are subject areas never before considered by the Commission. As a result, the Staff of the Commission does not possess this expertise (nor should they be expected to). The OPC believes that it would be prudent for the Commission to take cautious approach to insure the ratepaying public that the Commission has provided itself and the parties ample time to evaluate this highly technical case and that the agency has the requisite expertise and assistance.

5. Accordingly, PEF's motion to have a severely shortened decision process on an issue of unprecedented technical complexity and gravity and a staggering potential customer impact of approximately \$1 billion (or more) is improper. Even rate cases involving less complexity and longer preparation time are not processed on such a

hurried schedule. The customers deserve a thorough and sufficiently deliberative process. PEF's suggested schedule does not support such a fair process.

6. PEF holds all the cards and information about this matter and should not be allowed to dictate the timing of the case for its own, unstated convenience. Since October 2009 (and even before), PEF has engaged dozens of experts inside and outside the Company to attempt repairs and analyze facts associated with a still-ongoing repair process. As evidenced by the over one million documents made available to the parties and Staff of the Commission at PEF's Tallahassee Offices, Progress Energy (the holding company) has been actively engaged in its own an internal investigation into the management decisions by PEF's steam generator replacement team, including but not limited to, the standard of care that PEF applied to engineering and construction activities in the walls of its own containment building, PEF's decision to self-manage this highly complex technical project as opposed to hiring SGT or Bechtel to manage the project, and PEF's management decision to ignore the equipment hatch option in favor of the self-managed cut-the-containment-building option. Furthermore, the Company is also currently engaged in talks with the insurance company (NEIL) over what amounts to the availability, or lack thereof, of potentially billions of dollars in insurance coverage. The intervenors will need every bit of the minimum of the 6 months preparation time already established by the Prehearing Officer's Order in order to prepare their case and to adequately respond to PEF's filing.

7. PEF has suggested an expedited schedule that would not be consistent with providing due process in such an extraordinary complex case. Any mention of the prehearing schedule established by the February 8<sup>th</sup> Order is conspicuously absent from

PEF's Motion. Even more significant is the absence any rationale offered by PEF in seeking departure from the schedule to which the Prehearing Officer ordered the parties to adhere and upon which the Citizens have relied in their planning, budgeting and resource allocation

8. The hearing preparation time established in the February 8<sup>th</sup> order is the minimum that would comport with providing the fundamental due process protections that Chapter 120, Fla. Stat. affords for the substantial interests of those ratepayers whom PEF expects to pay for the enormous damage the Company caused to their own building. Due to the complexity of the case, the schedule may even need some expansion in order to allow for surrebuttal.

9. OPC has engaged in good faith discussions with PEF regarding the issues and scope of the case and was of the belief that PEF agreed that decisions about bifurcation or "trifurcation" could await, and be based upon, that issue-identification discussion. Thus, the PEF motion suggesting this highly prejudicial and unfair schedule and the suggestion to preemptively carve up the case has come as a complete surprise. For all of the above reasons, OPC objects to the PEF's Motion.

10. This preliminary response is made at this time due to PEF's last minute filing – less than two business days before the status conference – and so that OPC's initial position can be considered in a timely fashion. Citizens reserve the right to supplement this response at the status conference.

IN CONCLUSION, the OPC urges rejection of the PEF Motion entirely. The Parties should instead be directed to meet and agree upon a list of issues to be addressed

in PEF's initial testimony. At that point, PEF would be expected to address these as-yet-unstated issues in its testimony. Issues of severance should only be decided based on facts and as a result of the issue identification process and subsequently filed testimony. The schedule established by Order No. PSC-0108-PCO-EI should not be changed. The starting point for the timeline embodied in that Order should be based upon on a list of agreed minimum issues.

Respectfully submitted,

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**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished electronically this 5<sup>th</sup> day of August, 2011 to all counsel of record as indicated below.

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