

RECEIVED FPSC

12 OCT - 1 AM 10: 28

COMMISSION  
CLERK

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Nuclear Cost Recovery  
Clause

Docket No. 120009-EI  
Submitted for Filing: October 1, 2012

REDACTED

REDACTED

**PROGRESS ENERGY FLORIDA, INC.'S POST-HEARING STATEMENT  
OF ISSUES AND POSITIONS AND ARGUMENTS IN SUPPORT OF ITS PETITION  
TO RECOVER COSTS OF THE LEVY NUCLEAR PROJECT AND CRYSTAL RIVER  
UNIT 3 UPRATE PROJECT AS PROVIDED IN SECTION 366.93, FLORIDA  
STATUTES, AND RULE 25-6.0423, F.A.C.**

Pursuant to Section 366.93, Florida Statutes, and Rule 25-6.0423, Florida Administrative Code ("F.A.C."), Progress Energy Florida, Inc. ("PEF" or the "Company"), petitioned the Florida Public Service Commission ("FPSC" or the "Commission"), to recover its costs for the Levy Nuclear Project ("LNP") and the Crystal River Unit 3 ("CR3") Extended Power Uprate ("EPU") project ("CR3 Uprate") through the Nuclear Cost Recovery Clause ("NCRC"). The Commission held a hearing to consider PEF's cost recovery request on September 10, 2012, and in accordance with Prehearing Order No. PSC-12-0455-PHO-EI, issued August 31, 2012, PEF submits its Post-Hearing Statement of Issues and Positions and Arguments in Support of its Petition to Recover Costs of the LNP and the CR3 Uprate project. As explained below, the record in this case conclusively demonstrates that the requirements of Section 366.93, Florida

Statutes, and Rule 25-6.0423, F.A.C. have been met, that there is no credible dispute as to the respective prudence and reasonableness of PEF's costs at issue in this NCRC proceeding, and that the Commission should therefore grant PEF's request in its Petition.

COM  
AFD 2  
APA  
ECO  
ENG  
GCL  
IDM  
TEL  
CLK

DOCUMENT NUMBER-DATE

06551 OCT-1 12

FPSC-COMMISSION CLERK

## I. INTRODUCTION: PEF'S BASIC POSITION.

For this 2012 NCRC docket the Commission must decide: (1) whether PEF's LNP 2011 costs were prudent; (2) whether PEF's LNP actual/estimated costs for 2012 and projected costs for 2013 are reasonable; (3) whether PEF's LNP 2011 project management, contracting, accounting and cost oversight controls were reasonable and prudent; (4) the long-term feasibility of completing the LNP; (5) whether PEF's CR3 Uprate 2011 costs were prudent; and (6) whether PEF's CR3 Uprate 2011 project management, contracting, accounting and cost oversight controls were reasonable and prudent.<sup>1</sup> With respect to these issues, the record evidence -- comprising the Company's pre-filed direct and rebuttal testimony and exhibits, hearing testimony, detailed Nuclear Filing Requirement ("NFR") schedules, reports of two extensive audits by Commission Staff, and discovery responses -- demonstrates that PEF's 2011 LNP and CR3 Uprate project costs, and its project management, contracting, accounting, and cost oversight controls, were prudent; that PEF's actual/estimated 2012 and projected 2013 LNP costs are reasonable; and that PEF's analysis of the long-term feasibility of the LNP should be approved.

The Commission must also decide issues related to the estimated all-in cost for the LNP and the estimated LNP commercial operation dates. PEF presented the estimated LNP total project cost and current projected in-service dates for the Levy nuclear power plants. These issues are undisputed.

---

<sup>1</sup> PEF moved to defer Commission consideration of the long-term CR3 Uprate project feasibility and the reasonableness of actual/estimated 2012 and projected 2013 construction expenditures and associated carrying costs for the CR3 Uprate project to the 2013 NCRC proceeding. The Commission granted PEF's motion and, as a result, a stipulation on Issues 2, 12, and 16 in this proceeding was entered in evidence that deferred these issues to the 2013 NCRC proceeding. (See Hearing Exhibit No. 119). PEF also filed revised position statements as to Issues 17, 18, and 19 and revised testimony of Mr. Thomas G. Foster and NFR A/E and P Schedules reflecting the impacts of the deferral. (See T. 300-325; Hearing Exhibit Nos. 7, 8, and 120).

There are two disputed legal issues the Commission also must decide. First, the Commission must decide if it is authorized by Section 366.93 to disallow carrying costs on the CR3 Uprate project costs. Second, the Commission must decide if it can unilaterally defer the determination of the prudence of PEF's actual 2011 CR3 Uprate project costs to the 2013 NCRC proceeding. Under controlling law and the record evidence in this proceeding, both of these issues should be resolved in PEF's favor.

First, the Commission cannot legally deny the recovery of carrying costs if the Commission finds the underlying construction costs were prudently incurred. The evidence conclusively demonstrates PEF prudently incurred its actual 2011 CR3 Uprate project costs. No contrary evidence was presented in direct testimony, nor was it elicited from the Company at the hearing. The Commission, therefore, cannot disallow the recovery of carrying costs on PEF's actual 2011 CR3 Uprate project costs.

Second, the Commission cannot unilaterally defer the decision on the prudence of PEF's actual 2011 CR3 Uprate project costs to the 2013 NCRC docket. The Commission's own rule requires that the Commission make this determination annually absent a request or stipulation by the utility to defer this determination. One or more Intervenor may argue the Commission may properly defer this determination until a decision is made by the Company to repair or retire CR3.<sup>2</sup> This is legally incorrect. A future decision to repair or retire CR3 has nothing to do with the actual, historical decisions and facts with respect to the Company's 2011 CR3 Uprate project costs. Those decisions were made, the costs were incurred, and the evidence exists now for

---

<sup>2</sup> The Intervenor in Docket No. 120009-EI are the Office of Public Counsel ("OPC"), Florida Industrial Power Users Group ("FIPUG"), White Springs Agricultural Chemicals d/b/a PCS Phosphate - White Springs ("PCS Phosphate"), Southern Alliance for Clean Energy ("SACE"), Federal Executive Agencies ("FEA"), and the Florida Retail Federation ("FRF").

the Commission to determine if they were prudent. That evidence conclusively demonstrates that PEF's actual 2011 CR3 Uprate project costs were prudently incurred. The Commission, accordingly, must make this determination.

Therefore, for all of these reasons, and as stated in more detail below, the Commission should approve PEF's petition and requests for cost recovery for its LNP and CR3 Uprate projects through the Capacity Cost Recovery Clause ("CCRC") factor.

## II. PEF'S POST-HEARING STATEMENT OF ISSUES AND POSITIONS AND ARGUMENTS IN SUPPORT OF SPECIFIC POSITIONS.

### A. Legal Issues.

**ISSUE 1:** Does Section 366.93, Florida Statutes, authorize the Commission to disallow recovery of all, or a portion of, the carrying costs prescribed by Section 366.93(2)(b), Florida Statutes?

#### **PEF Position:**

\*No, Section 366.93, Florida Statutes, does not authorize the Commission to disallow recovery of all, or a portion of, the carrying costs prescribed by Section 366.93(2)(b), Florida Statutes, on prudently incurred costs. If the Commission finds, based on a preponderance of the evidence adduced at a hearing before the Commission under Section 120.57, Florida Statutes, that certain nuclear power plant costs were imprudently incurred, then the Commission can disallow the carrying costs on those imprudent nuclear power plant costs. Absent that factual determination by the Commission, disallowance of the statutorily prescribed carrying costs is legally impermissible.\*

#### **The Commission is Not Statutorily Authorized to Disallow Recovery of Carrying Costs Prescribed by Section 366.93(2)(b) on Prudently Incurred Costs**

Section 366.93 provides that the Commission shall establish, by rule, alternative cost recovery mechanisms for the recovery of costs incurred for a nuclear power plant and states that:

[s]uch mechanisms shall be designed to promote utility investment in nuclear..... , and allow for the recovery in rates of all prudently incurred costs and shall include, but not be limited to:

(a) Recovery through the capacity cost recovery clause of any preconstruction costs.

(b) Recovery through an incremental increase in the utility's capacity cost recovery clause rates of the carrying costs on the utility's projected construction cost balance associated with the nuclear or integrated gasification combined cycle power plant. To encourage investment and provide certainty, for nuclear or integrated gasification combined cycle power plant need petitions submitted on or before December 31, 2010, associated carrying costs shall be equal to the pretax AFUDC in effect upon this act becoming law. (emphasis supplied).

Thus, the Florida Legislature mandated the recovery of carrying costs on the utility's projected construction cost balance associated with prudently incurred nuclear power plant costs. The Florida Legislature made clear the recovery of carrying costs included all components of the Allowance for Funds Used During Construction ("AFUDC"). *Id.* ("To encourage investment and provide certainty, ... associated carrying costs shall be equal to the pretax AFUDC in effect upon this act becoming law."). Indeed, the Florida Legislature defined "costs" to include but not be limited to "all capital investments, including rate of return," among taxes and all expenses. § 366.93(1)(a), Fla. Stats. The Commission must allow the recovery of AFUDC carrying costs on the utility's projected construction cost balance that is determined to be prudent.

This legislative mandate is clear and unambiguous. Consequently, the Commission must give the statute its "plain and obvious meaning." *Holly v. Auld*, 450 So. 2d 217, 219 (Fla. 1984) ("[w]hen the language of the statute is clear and unambiguous and conveys a clear and definite meaning, there is no occasion for resorting to the rules of statutory interpretation and construction; the statute must be given its plain and obvious meaning."); *A.R. Douglass, Inc. v. McRaney*, 137 So. 157, 159 (Fla. 1931) (same). Florida courts are "without power to construe an unambiguous

statute in a way which would extend, modify, or limit, its express terms or its reasonable and obvious implications. To do so would be an abrogation of legislative power.” *American Bankers Life Assurance Company of Florida v. Williams*, 212 So. 2d 777, 778 (Fla. 1st DCA 1968). The Commission likewise has no authority beyond the authority prescribed by the Florida Legislature. See *United Telephone Co. of Florida, v. Public Service Commission*, 496 So. 2d 116, 118 (Fla. 1986) (the Commission derives its power solely from the legislature and cannot exercise jurisdiction where none has been granted). The Commission cannot create authority where none has been granted nor can the Commission modify or limit the authority granted by the Florida Legislature. *Rinella v. Abifaraj*, 908 So. 2d 1126, 1129 (Fla. 1st DCA 2005) (an agency cannot disregard or ignore the express statutory provisions nor can it modify, limit, or enlarge the authority it derives from the statutes). The Florida Legislature mandated the recovery of carrying costs at the statutorily-established AFUDC rate on prudently incurred costs in the utility's construction cost balance. The Commission has no authority to disallow all or part of those carrying costs on prudently incurred costs or to change the AFUDC rate in Section 366.93.

The Commission recognized this mandate when it adopted Commission Rule 25-6.0423 implementing Section 366.93 as the Florida Legislature required. The Commission's rule provides that “[t]he Commission shall include carrying costs on the balance of construction costs determined to be reasonable or prudent in setting the factor in the annual Capacity Cost Recovery Clause proceeding...” Rule 25-6.0423(b)3., F.A.C. (emphasis supplied). It is well settled that the Commission is required to follow its own rules. See *Collier County Bd. of County Com'rs v. Fish & Wildlife Conservation Comm'n*, 993 So. 2d 69, 72-73 (Fla. 2d DCA 2008) (citing *Vantage Healthcare Corp. v.*

*Agency for Health Care Admin.*, 687 So. 2d 306, 308 (Fla. 1st DCA 1997) (“An agency action which conflicts with the agency’s own rules is erroneous.”). The Commission has done just that in past NCRC proceedings, ruling in the 2009 NCRC docket that the “legislature provided certainty by establishing a carrying cost rate to be applied to the nuclear project, and this carrying cost shall be recovered pursuant to Rule 25-6.0423(2), F.A.C., no more and no less.” See Order No. PSC-09-0783-FOF-EI, p. 10 (emphasis supplied). The Commission must follow its rule here too, and carry out the legislative mandate to provide certainty and encourage nuclear investment by allowing PEF to recover its carrying costs on prudently incurred CR3 Uprate project costs at “no more and no less” than the statutorily-established AFUDC rate.

Intervenors may argue that the Commission’s general authority under Chapter 366 to establish fair, just, and reasonable rates authorizes the Commission to disallow all or part of the carrying costs or to modify the AFUDC rate on prudently incurred CR3 Uprate costs when it is “fair” to do so under the circumstances because PEF has not yet made a final decision to repair or retire CR3. Intervenors are wrong. This Commission rejected this argument before when intervenors argued that the Commission should implement a “risk sharing” mechanism. See Order No. PSC-11-0095-FOF-EI, Docket No. 100009-EI, p. 9 (the Commission found it had no authority to require a utility to implement a risk sharing mechanism that precluded the utility from recovering costs the utility was entitled to recover under 366.93). The Commission recognized that Section 366.93 expressly controls the recovery of costs associated with nuclear power plants. The Commission further explained “it is settled law in Florida” that the specific statute controls when a specific statute and general statute cover the same subject area. *Id.*, p. 8; see also *School Board of Palm Beach County v. Survivors Charter Schools, Inc.*, 3

So. 3d 1220, 1233 (Fla. 2009). The Commission determined that its general authority to set rates did not provide the authority to modify or limit the authority granted by the Florida Legislature in Section 366.93. *Id.* Consequently, the Commission's general authority to establish rates does not authorize the Commission to modify or limit the recovery of carrying costs at the AFUDC rate on prudently incurred CR3 Uprate project costs.

It bears emphasis, as explained in more detail below, that no intervenor presented or elicited any evidence that any of the actual construction costs incurred in 2011 on the CR3 Uprate project were imprudent. Intervenors, therefore, are necessarily presenting this issue to the Commission to determine whether it has the authority to disallow all or part of the carrying costs or to revise the AFUDC rate for prudently incurred actual costs. The Commission clearly has no authority to disallow carrying costs or to modify the AFUDC rate on prudently incurred costs.

**ISSUE 1A: Does the term "certain costs" in Section 403.519(4)(e), Florida Statutes, include costs caused by an imprudent decision or action that are incurred in years subsequent to the year of the imprudent decision or action?**

**PEF Position:**

\*Yes. Pursuant to Section 403.519(4)(e), Florida Statutes, "certain costs" are those costs that "shall not be subject to challenge unless and only to the extent the commission finds, based on a preponderance of the evidence adduced at a hearing before the commission under s. 120.57, that certain costs were imprudently incurred." Thus, if the Commission finds that a certain decision or action was imprudent, "certain costs" can include costs that are actually and proximately causally-related to that imprudent decision or action.\*



**ISSUE 2:** Should the Commission disallow recovery of any AFUDC on the Crystal River Unit 3 Uprate project in 2012 and 2013 due to the lack of a final decision to repair or retire Crystal River Unit 3? If yes, what amount should the Commission disallow, if any?

**PEF Position:**

\*This issue is subject to the stipulation approved on September 10, 2012 and entered as Hearing Exhibit No. 119.

The questions presented in this issue are moot for the 2012 NCRC hearing because on September 5, 2012 the Commission voted to approve PEF's motion requesting deferral of the Commission's review of the reasonableness of PEF's 2012 and 2013 CR3 Uprate project estimated and projected costs and associated carrying costs until the 2013 NCRC proceeding.\*

**ISSUE 3:** Does the Commission have the authority to defer the determination of prudence for the Crystal River Unit 3 Uprate project for 2011 (and, thus, defer cost recovery in 2013) until a final decision to repair or retire has been implemented? If yes, should the Commission exercise this authority?

**PEF Position:**

\*No. The Commission does not have the legal authority to unilaterally defer a determination of prudence for the CR3 Uprate project 2011 costs pursuant to Section 366.93 and Rule 25-6.0423. The annual prudence determination is mandatory and the Commission is not authorized to defer this determination absent a request or stipulation by a utility subject to Rule 25-6.0423. Moreover, there is no reason to defer the prudence determination. The record regarding PEF's 2011 CR3 Uprate project decisions and costs is complete. There is no additional information bearing on historical 2011 decisions and costs that the Commission needs to determine the prudence of PEF's 2011 costs. The assertion that future, unrelated information is necessary to evaluate historical 2011 decisions and costs is incorrect.\*

**The Commission Cannot Unilaterally Defer  
the Determination of Prudence for 2011 CR3 Uprate Project Costs**

Rule 25-6.0423 implements the alternative cost recovery mechanisms required by the Florida Legislature in Section 366.93 and establishes annual NCRC proceedings to review the prudence and reasonableness of costs. This rule provides that the utility "shall submit for Commission review and approval" on an annual basis by prescribed

dates its actual, actual/estimated, and projected nuclear power plant project costs. See Rule 25-6.0423(5)(c)1-5, F.A.C. Rule 25-6.0423 further states that the Commission “[a]nnually, shall make a prudence determination of the prior year’s actual construction costs and associated carrying costs, *Id.* at ¶ (5)(c)2, (emphasis supplied); and “shall include those costs it determines ... prudent in setting the Capacity Cost Recovery Clause factor in the annual Fuel and Purchased Power Cost Recovery proceedings.” *Id.* at ¶ (5)(c)3. This is a mandatory Commission requirement in the rule and it is well-settled that an agency is required to follow its own rules. See *Collier County*, 993 So. 2d at 72-73 (citing *Vantage Healthcare*, 687 So. 2d at 308 (“An agency action which conflicts with the agency’s own rules is erroneous.”)). The Commission must determine the prudence of PEF’s actual construction costs and associated carrying costs for the CR3 Uprate project.

Waiver or variance of an agency rule is prescribed under Section 120.542, Florida Statutes. Variances and waivers of agency rules shall be granted “when the person subject to the rule” satisfies the prescribed criteria for waiver or variance of the rule requirements under Section 120.542(2). §120.542(2), Fla. Stats. Only the “person subject to” Rule 25-6.0423 can obtain a waiver or variance of the rule requirements requiring the Commission to annually determine the prudence of the costs for a nuclear power plant project. The “person subject to” Rule 25-6.0423 is the utility. The Commission is bound by this express statutory limitation.

As explained above, the Commission cannot create authority where none has been granted by the Florida Legislature. *Rinella*, 908 So. 2d at 1129 (an agency cannot disregard or ignore the express statutory provisions nor can it modify, limit, or enlarge the authority it derives from the statutes). Thus, the Commission cannot unilaterally

waive or vary the prudence determination by deferring the determination of the prudence of PEF's 2011 CR3 Uprate project costs to the 2013 NCRC docket or some other period of time. The Commission is not authorized by the Florida Legislature to modify and enlarge Section 120.542 in this manner.

PEF has not requested a waiver or variance of the requirement in Rule 25-6.0423 that the Commission determine the prudence of its 2011 CR3 Uprate project costs, nor has PEF moved to defer or stipulated to the deferral of that determination. The Commission, therefore, must determine the prudence of PEF's 2011 CR3 Uprate project costs.

The Commission has all of the information necessary to make a prudence determination on PEF's 2011 actual construction costs and associated carrying costs for the CR3 Uprate project. These are historical decisions and costs. The decisions leading to these costs in 2011 on the project have already been made and the costs have already been incurred on the project. Nothing that occurs in the future, then, will change the historical facts of these decisions and costs. The historical facts related to these 2011 CR3 Uprate project decisions and costs were presented to the Commission in the testimony and exhibits of Mr. Garrett and Mr. Franke (T. 225-243; 566-586; 623-625; Hearing Exhibit No. 3), the Commission Staff has audited these decisions and costs, and the testimony, exhibits, and Staff audits were introduced in evidence at the hearing. (T. 547-559; 720-724; Hearing Exhibit Nos. 25 & 27). The Commission Staff and intervenors had the opportunity to review the prudence of PEF's 2011 actual costs through discovery and at the final hearing. (T. 564-715). The Commission has what it needs to determine the prudence of PEF's 2011 CR3 Uprate project costs.

Intervenors claimed in their opening statements that the Commission should nevertheless defer the determination of the prudence of PEF's CR3 Uprate project 2011 actual construction costs "until the dust has finally settled on a repair or retire decision" so that we can find out whether in fact Progress is "throwing good money after bad." (T. 212).<sup>3</sup> The only asserted basis for this requested deferral was the deferred feasibility determination and their claim that feasibility cannot be demonstrated because the Company has not made a final decision to repair or retire CR3. (T. 211). Neither of these arguments provides a legal basis for the Commission to defer the mandatory requirement to determine the prudence of PEF's 2011 CR3 Uprate project costs.

To begin with, for all the reasons provided above, intervenors' argument is legally improper. Intervenors ignore the statutory requirement that the Commission must allow PEF to recover its prudently incurred nuclear power plant costs and the regulatory mandate that the Commission annually determine the prudence of PEF's actual, historical CR3 Uprate project costs.

Intervenors' argument is also logically inaccurate and legally improper under the well-established prudence standard. The historical decisions that led to the incurrence of actual costs in 2011 for the CR3 Uprate project cannot be altered or affected in any way by a subsequent decision by the Company this year or next, whether that decision is to repair CR3 or retire the plant. The applicable prudence standard, as affirmed by this Commission many times, requires "consideration of what a reasonable utility manager would have done in light of conditions and circumstances which were known or reasonably should have been known at the time decisions were made." See, e.g.,

---

<sup>3</sup> PCS Phosphate's counsel made this argument but the other intervenors joined in the argument. (T. 212; 214; 216; 220-221).

Order No. PSC-11-0547-FOF-EI, p. 20 (citing Order No. PSC-08-0749-FOF-EI, p. 28) (emphasis supplied). Waiting “until the dust has finally settled on a repair or retire decision,” therefore, will not provide the Commission any evidence as to the prudence of PEF’s 2011 CR3 Uprate project decisions and the costs incurred on the project in 2011. (T. 212). Future decisions simply cannot affect historical decisions and costs, thus, this argument is logically incorrect and, under the well-established prudence standard, legally improper.

The fact that the Commission has deferred feasibility pursuant to PEF’s request cannot and does not affect this result. The long-term feasibility of completing the power plant uprate has nothing to do with the historical decisions that led to the incurrence of actual costs on the project. The Rule recognizes this, providing that the true-up of previous year actual costs is separately filed with the Commission in March, Rule 25-6.0423(5)(c)1.a., F.A.C., while the long-term feasibility analysis is filed in May with the projections of current year and subsequent year costs. See Rule 25-6.0423(5)(c)1.b.c. and 5, F.A.C. Nowhere in the rule is the determination of the prudence of the previous year actual costs dependent on the determination of the feasibility of completing the power plant, nor could it logically be. In contrast, the Commission did require in the rule “an on-going auditing and monitoring program of construction costs and related contracts” to “facilitate” the prudence determination.” Rule 25-6.0423(5)(c)2, F.A.C. See *Thayer v. State*, 335 So. 2d 815, 817 (Fla. 1976) (“a general principle of statutory construction that the mention of one thing implies the exclusion of another; *expressio unius est exclusio alterius*. Hence, where a statute enumerates the things on which it is to operate, or forbids certain things, it is ordinarily to be construed as excluding from its operation all those not expressly mentioned.”).

The Commission further recognized that the review and approval of the feasibility analysis of completing the power plant project has nothing to do with the prudence determination of actual, historical costs on the project when the Commission explained that “long-term feasibility is primarily meant to analyze the ‘going forward’ costs of the ... project.” See Order No. PSC-11-0547-FOF-EI, p. 38. The “long-term” feasibility of completing the power plant project necessarily includes cost projections and other forecasts in the analysis. By definition, estimates, projections, and forecasts do not involve actual, historical costs. As a result, the feasibility of the CR3 Uprate project on a going-forward basis has nothing to do with consideration of the prudence of past project costs.<sup>4</sup> The determination of the prudence of PEF’s 2011 actual CR3 Uprate project costs, therefore, is not dependent on any feasibility determination.

Accordingly, for all of these reasons, the Commission cannot unilaterally defer the determination of the prudence of the 2011 CR3 Uprate project costs. PEF is entitled to a determination of the prudence of its actual, historical 2011 CR3 Uprate project costs at this time based on the evidence presented in the 2012 NCRC proceeding.

**B. Factual Issues.**

**LEVY NUCLEAR PROJECT**

**ISSUE 4: Do PEF’s activities since January 2011 related to Levy Units 1 & 2 qualify as “siting, design, licensing, and construction” of a nuclear power plant as contemplated by Section 366.93, F.S.?**

---

<sup>4</sup> In fact, PEF is entitled to recover all of its prudently incurred costs even if the project is subsequently cancelled. §366.93(6) (“If the utility elects not to complete or is precluded from completing construction of the nuclear power plant, ... the utility shall be allowed to recover all prudent preconstruction and construction costs incurred following the commission's issuance of a final order granting a determination of need for the nuclear power plant ...”); see also Rule 25-6.0423(6), F.A.C. Obviously, cancellation of the project must necessarily mean the project is no longer feasible yet the Commission can still determine the prudence of actual, historical costs incurred on the project. The prudence determination of actual project costs, therefore, is not dependent on the determination of project feasibility.

**PEF Position:**

\*Yes. This same issue was included in prior NCRC Dockets. In both prior NCRC Dockets the Commission found that PEF's activities qualified under the statute. See Order No. PSC-11-0547-FOF-EI and Order No. PSC-11-0095-FOF-EI. The undisputed evidence shows that PEF's LNP activities since January 2011 are similar to the Company's prior LNP activities and they likewise qualify as the "siting, design, licensing, and construction" of a nuclear power plant under Section 366.93, Florida Statutes.\*

**PEF Has Again Demonstrated its LNP Activities Qualify as the "siting, design, licensing, and construction" of a Nuclear Power Plant Under Section 366.93.**

Commission precedent now determines what qualifies as nuclear power plant siting, design, licensing and construction activities under Section 366.93. A utility is not required to engage in siting, design, licensing and construction activities simultaneously on a nuclear power plant project to satisfy Section 366.93. See Order No. PSC-11-0095-FOF-EI, p. 9. Rather, the utility must demonstrate that it is incurring preconstruction or construction costs related to siting, design, licensing, or construction activities for a nuclear power plant. If the utility demonstrates such costs for these nuclear power plant activities, the utility demonstrates, "through its actions, an intent to build the nuclear power plant for which it seeks advance recovery of costs." See Order No. PSC-11-0547-FOF-EI, p. 88 (emphasis supplied); see also §366.93(1)(a), (2), Fla. Stats. This evidentiary demonstration is sufficient to satisfy Section 366.93.

The undisputed evidence demonstrates that PEF's LNP preconstruction and construction costs are for "siting, design, licensing, or construction" activities for a nuclear power plant. (T. 227-234; 246-260; 275-291; 365-419; 427). PEF has conclusively demonstrated its intent to build the LNP through its actions on the LNP for which it seeks cost recovery under Section 366.93 and Rule 25-6.0423. PEF has therefore satisfied Section 366.93.

To summarize the undisputed evidence, the LNP is an active project under an existing Nuclear Regulatory Commission (“NRC”) Combined Operating License Application (“COLA”) and an existing Engineering, Procurement and Construction (“EPC”) agreement with Westinghouse and Shaw, Stone & Webster (the “Consortium”), to build two AP1000 nuclear power plants on a site in Levy County. (T. 247; 409-410; 417). All costs incurred by PEF in 2011 and projected for 2012 and 2013 for the LNP are specifically related to the siting, licensing, design and/or construction of the Levy nuclear plants. (T. 247-260; 365-419). PEF has incurred in 2011 and continues to incur costs in connection with licensing application and engineering activities to support the Levy COLA. (T. 245-260; 408-417). PEF will continue to incur these costs through 2014 when receipt of the LNP Combined Operating License (“COL”) from the NRC is now expected. (T. 362; 427-428; 437-438; 493; 512). PEF has incurred and continues to incur costs for environmental permit licensing and related engineering activities for the LNP. (T. 248-252; 408-417). PEF has incurred and will incur costs for activities under PEF’s LNP EPC agreement with the Consortium, including activities to implement the Company’s decision to extend the partial suspension and shift the Levy nuclear unit in-service dates to 2024 and 2025. (T. 252; 365; 372-373; 401; 408; Hearing Exhibit No. 10). Costs for all of these activities are for the development and eventual construction of the Levy nuclear power plants.

Intervenors presented and elicited no evidence that PEF was not incurring costs for these activities for the LNP. The undisputed evidence shows that the Company is proceeding with the development of the LNP and incurring costs for siting, licensing, design and construction activities to place the LNP in commercial service. (T. 247-260; 365-419; 463). The Company’s witnesses made clear they presently intend to build the



LNP, they have a Company-approved plan to do so, and they are engaging in the activities necessary to make that happen and place the Levy nuclear units in service in 2024 and 2025. (T. 498-500; 530-535; Hearing Exhibit No. 10). PEF's LNP activities demonstrate the requisite intent to build the nuclear power plant for which it seeks the recovery of costs under Section 366.93.

**ISSUE 5: Should the Commission approve what PEF has submitted as its 2012 annual detailed analysis of the long-term feasibility of completing the Levy Units 1 & 2 project, as provided for in Rule 25-6.0423, F.A.C.? If not, what action, if any, should the Commission take?**

**PEF Position:**

\*Yes, the Commission should approve PEF's annual analysis of the long-term feasibility of completing the LNP. With the testimony and exhibits of Mr. Elnitsky, PEF submitted a detailed analysis setting forth the long-term feasibility of completing the LNP, consistent with Rule 25-6.0423 and the analysis this Commission approved in Docket Nos. 090009-EI, 100009-EI, and 110009-EI. If the Commission does not approve PEF's submission based on perceived technical deficiencies, it should identify the deficiencies and permit PEF to re-file with additional information. If the Commission finds the LNP is not feasible on substantive grounds, this would preclude PEF from completing the LNP and the Commission should award PEF its prudent 2011, reasonable 2012, and reasonable project exit costs pursuant to Section 366.93(6).\*

**The Undisputed Evidence Demonstrates that the LNP Continues to be Feasible.**

PEF introduced in evidence its detailed analysis setting forth the updated long-term feasibility of completing the LNP, consistent with the Commission's rule, Orders, and prior PEF LNP feasibility analyses approved by the Commission. (T. 373-408; Hearing Exhibit No. 11). No intervenor introduced or elicited any evidence challenging the Company's current LNP feasibility analysis. The Company's analysis conclusively demonstrates that the LNP is feasible.

In sum, PEF's analysis demonstrates that the LNP is qualitatively and quantitatively feasible. The LNP is feasible from a regulatory perspective. (T. 373-400).

The AP1000 design has been approved, the NRC has issued COL's for the Vogtle and Summer AP1000 plants, the NRC has issued the LNP final environmental impact statement ("FEIS"), will soon issue the LNP final safety evaluation report ("FSER"), and is proceeding with the LNP COLA review. (T. 390-391; 396-400; 525). The LNP COL has been delayed by the recent Court of Appeals and NRC decisions with respect to the NRC Waste Confidence Rule, but the LNP COL is still expected in 2014. (T. 362; 428; 437-438; 493; 512). All licenses and permits necessary to operate the LNP can be obtained. (T. 389-399). The LNP is also technically feasible. Similar construction of AP1000 nuclear reactors is proceeding in China and at the Vogtle and Summer sites. (T. 396-400; 485; 525). There is no reason to believe the AP1000 nuclear reactors cannot be built at the Levy site. Qualitatively, the near term enterprise risks have increased, leading to the Company's decision to extend the current partial suspension and place the Levy units in service in 2024 and 2025, but there is no reason to expect these increased enterprise risks to continue for the length of time to develop the LNP and operate the Levy nuclear units. (T. 400-403; 454; 501-502; 509-510).

The LNP continues to be economically feasible. The updated cumulative present value revenue requirements ("CPVRR") economic analysis includes updated, lower natural gas fuel forecasts, the Company's updated total LNP project cost estimate based on the 2024 and 2025 Levy unit in-service dates, and demonstrates that the LNP is economically feasible. (T. 404-408; Hearing Exhibit No. 11). The summary of the updated LNP CPVRR results is included in the chart below:

**Economic Results Summary Table (NCRC '12 Study)**

**Fuel Sensitivities**

Base Capital Reference Case	Low Fuel Reference	Mid Fuel Reference	High Fuel Reference
-----------------------------	--------------------	--------------------	---------------------

**CapEx Sensitivities**

Mid Fuel Reference Case	LNP CapEx (15%)	LNP CapEx (5%)	Mid Fuel Reference	LNP CapEx +5%	LNP CapEx +15%	LNP CapEx +25%
-------------------------	-----------------	----------------	--------------------	---------------	----------------	----------------

**NCRC APR '12: 100% Ownership, 2024 COD Levy Case Versus All Gas CPVRR \$Million, 6.47% Discount Rate**

	Base Case	Low Fuel	Mid Fuel	High Fuel	Base Case	+5%	+15%	+25%
No CO <sub>2</sub>	(\$12,022)	(\$3,907)	\$7,859		(\$2,400)	(\$3,405)	(\$3,907)	(\$4,410)
EPA WM CO <sub>2</sub>	(\$7,785)	\$402	\$12,372		\$1,910	\$905	\$402	(\$100)
CRA WM CO <sub>2</sub>	(\$5,113)	\$3,023	\$15,027		\$4,531	\$3,526	\$3,023	\$2,520
EPRI Full CO <sub>2</sub>	(\$2,794)	\$5,347	\$17,448		\$6,855	\$5,850	\$5,347	\$4,844
EPRI Ltd CO <sub>2</sub>	\$3,037	\$11,184	\$23,224		\$12,692	\$11,687	\$11,184	\$10,682

**NCRC APR '12: 80% Ownership, 2024 COD Levy Case Versus All Gas CPVRR \$Million, 6.47% Discount Rate**

	Base Case	Low Fuel	Mid Fuel	High Fuel	Base Case	+5%	+15%	+25%
No CO <sub>2</sub>	(\$9,613)	(\$3,121)	\$6,335		(\$1,959)	(\$2,734)	(\$3,121)	(\$3,509)
EPA WM CO <sub>2</sub>	(\$6,284)	\$194	\$9,859		\$1,357	\$582	\$194	(\$194)
CRA WM CO <sub>2</sub>	(\$4,182)	\$2,224	\$11,894		\$3,387	\$2,611	\$2,224	\$1,836
EPRI Full CO <sub>2</sub>	(\$2,356)	\$4,045	\$13,757		\$5,208	\$4,432	\$4,045	\$3,657
EPRI Ltd CO <sub>2</sub>	\$2,228	\$8,639	\$18,176		\$9,802	\$9,026	\$8,639	\$8,251

**NCRC APR '12: 50% Ownership, 2024 COD Levy Case Versus All Gas CPVRR \$Million, 6.47% Discount Rate**

	Base Case	Low Fuel	Mid Fuel	High Fuel	Base Case	+5%	+15%	+25%
No CO <sub>2</sub>	(\$7,007)	(\$2,852)	\$3,232		(\$2,073)	(\$2,592)	(\$2,852)	(\$3,111)
EPA WM CO <sub>2</sub>	(\$4,803)	(\$655)	\$5,454		\$124	(\$395)	(\$655)	(\$914)
CRA WM CO <sub>2</sub>	(\$3,423)	\$768	\$6,782		\$1,546	\$1,027	\$768	\$508
EPRI Full CO <sub>2</sub>	(\$2,194)	\$2,039	\$8,027		\$2,817	\$2,298	\$2,039	\$1,779
EPRI Ltd CO <sub>2</sub>	\$812	\$5,084	\$11,101		\$5,863	\$5,344	\$5,084	\$4,825

This CPVRR economic analysis demonstrates that the LNP is more cost effective than the all natural gas generation resource plan. (T. 405-406; Hearing Exhibit No. 11). As a result, the Company has demonstrated that the LNP is economically beneficial to PEF's customers over the sixty-year life of the Levy nuclear units. (T. 380-384; 405-407).

The LNP still fulfills the Florida legislative objectives embodied in Section 403.519(4) and the Commission's need determination for the LNP. The LNP provides fuel portfolio diversity to the State and the Company, reduces reliance on fossil fuels for energy production, provides carbon free energy generation, and provides base load capacity with a low cost fuel source. (T. 478-479; 499; 515). These long-term benefits further justify completion of the LNP. (T. 478-479; 497-499; 520-521).

No intervenor introduced any evidence and no witness testified that the LNP is not feasible. SACE will argue, however, that current, historically low natural gas prices,

the present lack of carbon costs on all fossil fuel energy generation as a result of greenhouse gas regulation, and low demand render new nuclear generation economically infeasible. (T. 450-454). SACE will further assert that other utilities have recognized that nuclear generation is not cost-effective and cancelled or abandoned new nuclear generation. (T. 455-459; Hearing Exhibits No. 117 & No. 126). SACE's arguments mischaracterize the Company's testimony and they are unsupported by any evidence that the LNP is not cost-effective over the 60-year operational life of the Levy nuclear units, which is the appropriate measure of economic feasibility under the analyses previously approved by this Commission. See Order No. PSC-11-0095-FOF-EI, p. 30-31 and Order No. PSC-11-0547-FOF-EI, p. 81.

PEF's witnesses Mr. Elnitsky and Mr. Lyash agreed that, at the present time, natural gas prices are at historical lows at levels indicative of the low fuel forecast prices in the Company's LNP CPVRR analyses. (T. 454-455; 451; 520-521). That does not mean, however, that the low fuel forecast is the appropriate forecast to use in the CPVRR analysis over the 60-year life of the Levy nuclear units. Rather, as Mr. Elnitsky and Mr. Lyash made clear, current, historically low natural gas prices result from an imbalance between supply and demand that logically and as a matter of fundamental economic principles cannot be expected to continue over the long-term, expected operational life of the Levy nuclear units. (T. 451, 454). To illustrate this point, Mr. Elnitsky testified that if you try to guarantee current, low natural gas prices for the next 20 years in the market "they'll laugh at you," and guarantee a 20-year gas supply only at a price roughly five times the current market price. (T. 459; see also T. 464). The evidence demonstrates that PEF appropriately accounted for this temporary imbalance in the natural gas market in its evaluation of natural gas prices in its CPVRR analysis.

(T. 478-479). No evidence was presented and no one testified that the Company's evaluation of natural gas prices in its fuel forecasts in the LNP CPVRR analysis was erroneous. (T. 462).

Likewise, current greenhouse gas legislative and regulatory circumstances are not indicative of future greenhouse gas legislation or regulation. The lack of greenhouse gas legislation or regulation imposing a carbon cost on all fossil fuel generation at the present time does not mean that there will never be any carbon cost on fossil fuel generation over the 60-year life of the Levy units. (T. 380-384; 520-521). The Company presented evidence that the environmental regulation of fossil fuels is continuing, not lessening, and that greenhouse gas legislation or regulation imposing some cost on carbon is inevitable, the only uncertainty is what form that regulation will take and when it will occur. (T. 380-384; 536-537). This evidence was undisputed.

Finally, Mr. Elnitsky agreed that the LNP was not needed today to meet demand, but testified that the LNP was needed to meet customer long-term demand for reliable base load capacity. (T. 448). Again, by focusing on present circumstances, SACE ignores the fundamental nature of the LNP and the determination of the cost-effectiveness of the Levy units. The LNP cannot be built and is not being built to serve the customers' immediate needs for electrical power. Rather, the LNP is being built to serve the long-term needs of customers for reliable, base load power over the expected 60-year operational life of the Levy nuclear units. (T. 380-384). This is the relevant time period to determine if the LNP is cost-effective or not and the undisputed evidence in this proceeding demonstrates that the LNP is cost effective over this time period. (T. 404-408; Hearing Exhibit No. 11).

In sum, the Company's qualitative and quantitative feasibility analyses demonstrate that completion of the LNP is still feasible. Based on the undisputed evidence of record PEF has demonstrated that the LNP is feasible.

**ISSUE 6: What is the current total estimated all-inclusive cost (including AFUDC and sunk costs) of the proposed Levy Units 1 & 2 nuclear project?**

**PEF Position:**

\*The current total estimated all inclusive cost for the Levy Units 1 & 2 nuclear project, including AFUDC and sunk costs, as of 2012 is approximately \$24.1 billion.\*

**PEF Established the Total Estimated Cost for the LNP.**

PEF demonstrated that the total estimated cost for the LNP including AFUDC and sunk costs is approximately \$24.1 billion. (T. 433, 464). No one presented any contrary evidence or disputed this estimate. As a factual matter, the total estimated all-inclusive cost for the proposed Levy Units 1 and 2 nuclear project has been established.

**ISSUE 7: What is the current estimated planned commercial operation date of the planned Levy Units 1 & 2 nuclear facility?**

**PEF Position:**

\*The Levy Units 1 & 2 nuclear plants are currently estimated for commercial operation in 2024 for Unit 1 and eighteen months later in 2025 for Unit 2.\*

**PEF's Undisputed Evidence Establishes the Estimated Commercial Operation Dates of the LNP are 2024 and 2025**

The undisputed evidence demonstrates that the estimated commercial operation dates for the LNP are 2024 and 2025. (T. 369; 401; 421; 497-498; 510-511; 530; Hearing Exhibit No. 10). No one presented any contrary evidence or disputed these estimated in-service dates. As a factual matter, the estimated LNP commercial operation dates have been established.

**ISSUE 8:** Should the Commission find that, for 2011, PEF's project management, contracting, accounting and cost oversight controls were reasonable and prudent for the Levy Units 1 & 2 project? If not, what action, if any, should the Commission take?

**PEF Position:**

\* Yes, for the year 2011, PEF's project management, contracting, accounting and cost oversight controls were reasonable and prudent for the LNP. These procedures are designed to ensure timely and cost-effective completion of the project. These project management and cost oversight controls include regular risk assessment, evaluation, and management. These policies, procedures, and controls are continually reviewed, and where necessary, revised and enhanced, all in line with industry best practices. The Company has appropriate, reasonable project accounting controls, project monitoring procedures, disbursement services controls, and regulatory accounting controls. The Company's 2011 LNP management and cost oversight controls, policies, and procedures are substantially the same as the policies and procedures reviewed and previously determined to be prudent by the Commission. \*

**PEF's 2011 Project Management, Contracting, Accounting and Cost Oversight Controls for the LNP are Prudent**

The undisputed evidence demonstrates that PEF's 2011 project management, contracting, accounting and cost oversight controls for the LNP are reasonable and prudent. No one credibly challenged this testimony. In its Prehearing Statement SACE made the unsupported assertion that changes and increases in project schedule and cost indicate unreasonable project management and cost oversight. See Prehearing Order No. PSC-12-0455-PHO-EI, p. 38. SACE, however, never presented nor elicited any evidence to corroborate this blanket assertion. The undisputed evidence contradicts this assertion. PEF's witnesses, Mr. Garrett, Mr. O'Cain, and Mr. Elnitsky presented undisputed evidence that PEF's project management, contracting, accounting and cost oversight controls for the LNP were reasonable and prudent. (T. 237-242; 260-270; 420-421). Staff witnesses and the Commission Staff audits supported the reasonableness and prudence of the LNP project management, contracting, accounting, and cost oversight controls. (T. 547-553; 560-561; 720-724;

Hearing Exhibits No. 25 & No. 26). Consequently, the undisputed record evidence demonstrates that PEF's 2011 LNP project management, contracting, accounting and cost oversight controls are reasonable and prudent.

**ISSUE 9:** What system and jurisdictional amounts should the Commission approve as PEF's final 2011 prudently incurred costs and final true-up amounts for the Levy Units 1 & 2 project?

**PEF Position:**

**REDACTED**

\*Capital Costs (System) [REDACTED]; (Jurisdictional) \$67,092,100.

O&M Costs (System) \$1,258,687; (Jurisdictional) \$1,154,469.

Carrying Costs \$48,658,064.

The over-recovery of \$12,649,655 should be included in setting the allowed 2013 NCRC recovery.

The 2011 variance is the sum of over-projection preconstruction costs of \$12,675,090, plus an over-projection of O&M expenses of \$260,104 plus an under-projection of carrying costs of \$285,540.\*

**The Undisputed Evidence Demonstrates that PEF's Actual  
2011 Costs Incurred for the LNP are Prudent**

The undisputed evidence demonstrates that the costs PEF incurred in 2011 for the LNP are prudent. (T. 225-234; 245-260; Hearing Exhibit No. 2). No intervenor presented nor elicited any evidence challenging the prudence of PEF's 2011 LNP actual costs. The evidence conclusively demonstrates that PEF's actual 2011 costs for the LNP are prudent.



**ISSUE 10: What system and jurisdictional amounts should the Commission approve as reasonably estimated 2012 costs and estimated true-up amounts for PEF's Levy Units 1 & 2 project?**

**PEF Position:**

**REDACTED**

\*Capital Costs (System) [REDACTED]; (Jurisdictional) \$21,391,932.  
O&M Costs (System) \$1,010,929; (Jurisdictional) \$927,458.  
Carrying Costs \$48,548,055.

The Commission should also approve an estimated 2012 LNP project true-up over-recovery amount of \$13,013,480 to be included in setting the allowed 2013 NCRC recovery.

The 2012 variance is the sum of an over-projection of Preconstruction costs of \$12,617,788, plus an over-projection of O&M expenses of \$477,616 plus an under-projection of carrying charges of \$81,924.\*

**ISSUE 11: What system and jurisdictional amounts should the Commission approve as reasonably projected 2013 costs for PEF's Levy Units 1 & 2 project?**

**PEF Position:**

**REDACTED**

\*Capital Costs (System) [REDACTED] (Jurisdictional) \$95,888,097.  
O&M Costs (System) \$1,106,148; (Jurisdictional) \$1,025,100.  
Carrying Charges \$22,089,049.

For the LNP, an amount necessary to achieve the rates included in Exhibit 5 (\$3.45/1,000kWh on the residential bill) of the Settlement Agreement approved in Order No. PSC-12-104-FOF-EI page 147 should be included in establishing PEF's 2013 CCRC.\*

**PEF's 2012 Actual/Estimated and 2013 Projected LNP Costs are Reasonable in Amount and Necessary for the LNP**

The undisputed evidence demonstrates that PEF's actual/estimated 2012 and projected 2013 costs for the LNP are reasonable. (T. 274-292; 363-420; Hearing Exhibit Nos. 4, 5, 6, 10). No intervenors presented or elicited any evidence disputing the reasonableness of any 2012 actual/estimated or 2013 projected LNP cost as

unnecessary for the project or unreasonable in amount. The evidence conclusively demonstrates that PEF's 2012 actual/estimated and 2013 projected costs for the LNP are reasonable.

### **CR3 UPRATE PROJECT**

**ISSUE 12:** Should the Commission approve what PEF has submitted as its 2012 annual detailed analysis of the long-term feasibility of completing the Crystal River Unit 3 Uprate project, as provided for in Rule 25-6.0423, F.A.C.? If not, what action, if any, should the Commission take?

#### **PEF Position:**

\*This issue is subject to the stipulation approved on September 10, 2012 and entered as Hearing Exhibit No. 119.

This issue is moot for the 2012 NCRC hearing because on September 5, 2012 the Commission voted to approve PEF's motion requesting deferral of the Commission's review of the long-term feasibility of completing the CR3 Uprate project until the 2013 NCRC proceeding.\*

**ISSUE 13:** Should the Commission find that, for 2011, PEF's project management, contracting, accounting and cost oversight controls were reasonable and prudent for the Crystal River Unit 3 Uprate project? If not, what action, if any, should the Commission take?

#### **PEF Position:**

\*Yes, for the year 2011, PEF's project management, contracting, accounting and cost oversight controls were reasonable and prudent for the CR3 Uprate. These procedures are designed to ensure timely and cost-effective completion of the project. These project management and cost oversight controls include regular risk assessment, evaluation, and management. These policies, procedures, and controls are continually reviewed, and where necessary, revised and enhanced, all in line with industry best practices. The Company has appropriate, reasonable project accounting controls, project monitoring procedures, disbursement services controls, and regulatory accounting controls. The Company's 2011 CR3 Uprate management and cost oversight controls, policies, and procedures are substantially the same as the policies and procedures reviewed and previously determined to be prudent by the Commission.\*

**PEF's 2011 Project Management, Contracting, Accounting and Cost Oversight Controls for the CR3 Uprate project are Prudent**

The undisputed evidence demonstrates that PEF's 2011 project management, contracting, accounting and cost oversight controls for the CR3 Uprate project are reasonable and prudent. No one challenged this testimony.<sup>5</sup> PEF presented undisputed evidence that PEF's project management, contracting, accounting and cost oversight controls for the CR3 Uprate project in 2011 were reasonable and prudent. (T. 237-243; 579-586; 623-625). This evidence was supported by Commission Staff testimony and audits of PEF's 2011 CR3 Uprate project management, contracting, accounting and cost oversight controls. (T. 547-559; 720-724; Hearing Exhibits No. 25 & No. 27). The undisputed record evidence demonstrates that PEF's 2011 project management, contracting, accounting and cost oversight controls for the CR3 Uprate project are reasonable and prudent.

**ISSUE 14: Were all of the actual Crystal River Unit 3 Uprate project expenditures prudently incurred or expended in 2011 in the absence of a final decision to repair or retire Crystal River Unit 3 in 2011?**

**PEF Position:**

\*Yes, all of the CR3 Uprate 2011 actual costs were prudently incurred. As explained by Mr. Franke, prior to the March 14, 2011 delamination, PEF was proceeding to complete the CR3 Uprate project in a 2013 re-fueling outage. At that point, PEF had incurred and committed to incur costs for the Uprate project in 2011 that were not amenable to revision as a result of this event. PEF thereafter prudently minimized CR3 Uprate costs

---

<sup>5</sup> Intervenors did question Staff witnesses Mr. Coston and Mr. Hallenstein to establish that the Commission Staff audit addressed the Company's management of the CR3 Uprate project given the 2011 delaminations and the Company's subsequent evaluation of the decision to repair or retire CR3 and not the Company's evaluation of that repair or retire decision. (T. 554-559). No evidence was elicited that the Company's management of the CR3 Uprate project under the circumstances facing the Company in 2011 was unreasonable or imprudent. Rather, the evidence demonstrates that, given the circumstances of the CR3 unit and the evaluation of the repair or retirement of CR3 facing the Company in 2011, the Company reasonably and prudently managed the CR3 Uprate project. (T. 237-243; 579-586; 623-625).

in 2011 to ensure that only those costs necessary to continue with the CR3 Uprate project if CR3 was repaired were incurred until a final decision to repair CR3 is made.\*

**PEF's CR3 Uprate Project 2011 Project Expenditures were Prudently Incurred**

All of the CR3 Uprate project 2011 actual costs were prudently incurred. As explained by Mr. Franke, subsequent to the March 2011 delamination, PEF evaluated the CR3 Uprate project work and determined that the reasonable course of action was to take steps to preserve the Company's ability to complete the CR3 Uprate in the current CR3 outage, without unnecessarily incurring costs for the project in 2011, while assessments regarding the potential repair of the CR3 containment building continued. (T. 594; 637-639). PEF prudently minimized CR3 Uprate costs in 2011 to ensure that only those costs necessary to continue with the CR3 Uprate project if CR3 was repaired were incurred until a final decision to repair CR3 is made. (T. 637-639; 645-646; 692-693; 695-696). These decisions resulted in the reallocation of project management resources and reduced project management expenditures in 2011 by \$4.7 million, and reduced Power Bock Engineering, Procurement, and related construction costs on the project by \$34.2 million in 2011. (T. 235-236; 576-577; 639; 645-646; Hearing Exhibit No. 3). The remaining 2011 CR3 Uprate project costs were necessary for the project to maintain the Company's ability to complete the uprate work during the current CR3 outage. Indeed, most of the 2011 CR3 Uprate project costs were incurred for unavoidable contractual long lead equipment payments, licensing and related engineering work on the Company's EPU License Amendment Request ("LAR") application, and necessary engineering analyses for the engineering change packages for the EPU. (T. 569-576; 660-661; 637-638; 669; 676-677; 679-680; 682-683; 687-689). This work and these costs were necessary to maintain the Company's ability to

complete the CR3 Uprate project and to complete it during the current, extended CR3 outage. (T. *Id.*; 594; 637-639).

There is no evidence that PEF's 2011 CR3 Uprate project costs are not prudent. OPC witness Dr. Jacobs, in fact, testified that he reviewed and evaluated "requests by PEF for authority to collect historical ... costs associated with the Extended Power Uprate ("EPU") project being pursued at Crystal River Unit 3 ("CR3")." (T. 718B). Dr. Jacobs did not testify that any historical, 2011 CR3 Uprate cost was unnecessary for the project or otherwise imprudently incurred. (T. 718-718L). The evidence, then, is undisputed that PEF's 2011 CR3 Uprate project costs were prudently incurred.

Intervenors may challenge the prudence of PEF's 2011 CR3 Uprate project costs because the Company has not yet made the final decision to repair or retire CR3. This argument ignores the fact that no witness testified that PEF should have cancelled or stopped work on the CR3 Uprate project in 2011 and intervenors themselves admitted that they do not "want to kill CR3 or the uprate." (T. 210; 214; 216; 220-221). Additionally, as explained above, this is a legally and logically improper argument. (See *supra* Issue 3, PEF Position, at pages 9-15). The historical CR3 Uprate project decisions in 2011 have been made and the 2011 costs incurred and nothing that occurs after 2011 changes those decisions or costs. The prudence standard followed by this Commission requires that the Commission determine the prudence of PEF's 2011 CR3 Uprate project costs based on the 2011 project decisions and costs incurred. See, e.g., Order No. PSC-11-0547-FOF-EI, p. 20 (citing Order No. PSC-08-0749-FOF-EI, p. 28) ("consideration of what a reasonable utility manager would have done in light of conditions and circumstances which were known or reasonably should have been

known at the time decisions were made.”). That evidence is undisputed here and demonstrates that PEF’s 2011 CR3 Uprate project costs are prudent.

**ISSUE 15: What system and jurisdictional amounts should the Commission approve as PEF’s 2011 prudently incurred costs and final true-up amounts for the Crystal River Unit 3 Uprate project?**

**PEF Position:**

\*Capital Costs (System) \$49,049,270; (Jurisdictional, net of joint owners) \$43,648,799.  
O&M Costs (System) \$498,775; (Jurisdictional, net of joint owners) \$461,200.  
Carrying Costs \$16,127,875 and a base revenue requirement credit of \$3,346,641.

The under-recovery of \$3,498,125 should be included in setting the allowed 2013 NCRC recovery. The 2011 variance is the sum of an O&M under-projection of \$461,276, under-projection of carrying charges of \$3,207,094 and an over-projection of other adjustments of \$170,245.\*

**The Undisputed Evidence Demonstrates that PEF’s Actual 2011 Costs Incurred for the CR3 Uprate Project are Prudent**

As demonstrated above (see *supra* Issue 14, PEF Position, at pages 28-31), the undisputed evidence demonstrates that the costs PEF incurred in 2011 for the CR3 Uprate project are prudent. (T. 225-230; 235-237; 566-579; Hearing Exhibit No. 3). No contrary evidence was introduced at the hearing. The evidence conclusively demonstrates that PEF’s actual 2011 CR3 Uprate project costs are prudent.

**ISSUE 16: Is it reasonable for PEF to incur or expend all of the estimated and projected Crystal River Unit 3 Uprate project expenditures in 2012 and 2013 in the absence of a final decision to repair or retire CR3?**

**PEF Position:**

\*This issue is subject to the stipulation approved on September 10, 2012 and entered as Hearing Exhibit No. 119.

This issue is moot for the 2012 NCRC hearing because on September 5, 2012 the Commission voted to approve PEF’s motion requesting deferral of the Commission’s review of the reasonableness of PEF’s 2012 and 2013 CR3 Uprate project estimated and projected costs and associated carrying costs until the 2013 NCRC proceeding.\*

**ISSUE 17: What system and jurisdictional amounts should the Commission approve as reasonably estimated 2012 costs and estimated true-up amounts for PEF's Crystal River Unit 3 Uprate project?**

**PEF Position:**

\*Pursuant to PEF's Motion for Deferral approved by the Commission on September 5, 2012:

Capital Costs (System) \$0; (Jurisdictional, net of joint owners) \$0.  
O&M Costs (System) \$0; (Jurisdictional, net of joint owners) \$130.  
Carrying Costs \$19,041,421 and a base revenue requirement credit of \$3,242,310.

The Commission should also approve an estimated 2012 EPU project true-up under-recovery of \$6,186,144 to be included in setting the allowed 2013 NCRC recovery. The 2012 variance is the sum of an O&M under-projection of \$840, plus an under-projection of carrying charges of \$6,165,675 plus an over-projection of other adjustments of \$19,629.\*

**ISSUE 18: What system and jurisdictional amounts should the Commission approve as reasonably projected 2013 costs for PEF's Crystal River Unit 3 Uprate project?**

**PEF Position:**

\*Pursuant to PEF's Motion for Deferral approved by the Commission on September 5, 2012:

Capital Costs (System) \$0; (Jurisdictional, net of joint owners) \$0.  
O&M Costs (System) \$0; (Jurisdictional, net of joint owners) \$173  
Carrying Costs \$30,352,822 and a base revenue requirement credit of \$3,587.\*

**ISSUE 19: What is the total jurisdictional amount to be included in establishing PEF's 2013 Capacity Cost Recovery Clause factor?**

**PEF Position:**

\*Pursuant to PEF's Motion for Deferral approved by the Commission on September 5, 2012:

For the CR3 Uprate project, \$40,033,676 (before revenue tax multiplier) should be included in establishing PEF's 2013 CCRC Factor. Please see chart below for a further breakout of these costs.

For the LNP, an amount necessary to achieve the rates included in Exhibit 5 (\$3.45/1,000kWh on the residential bill) of the Settlement Agreement approved in Order No. PSC-12-104-FOF-EI page 147 should be included in establishing PEF's 2013 CCRC.\*

**Breakout of CR3 Uprate Total Jurisdictional  
Amounts for 2013 CCRC Factor**

TOPIC		Reference: PEF 2012 NCRC Filings	Reference: Motion for Deferral granted, September 5, 2012
<b>CR 3 Uprate</b>			
	CR3 Uprate 2011 Final True- up	\$ 3,498,125	\$ 3,498,125
	CR3 Uprate 2012 Estimated True-up	8,176,192	6,186,144
	CR3 Uprate 2013 Projections	37,295,806	30,349,407
	CR3 Uprate Subtotal	\$ 48,970,123	\$ 40,033,676
	Rev Tax Multiplier	1.00072	1.00072
<b>CR3 Uprate Total</b>		\$ <b>49,005,381</b>	\$ <b>40,062,500</b>

Issues 20 through 33 are Florida Power & Light ("FPL") specific issues and as such PEF takes no position on these issues and does not address these issues in its Post-Hearing Brief.

**III. CONCLUSION.**

Section 366.93 requires that the Commission allow the recovery of prudent and reasonable nuclear project costs. The evidence conclusively demonstrates that PEF's LNP and CR3 Uprate costs are respectively prudent or reasonable. PEF also



demonstrated the long-term feasibility of completing the LNP. The Commission should therefore permit the recovery of all of PEF's costs in this proceeding. For all of the foregoing reasons, the Commission should grant PEF's Petition for Cost Recovery through the NCRC for its CR3 Uprate project and LNP.

Respectfully submitted,



John T. Burnett  
Deputy General Counsel  
Dianne M. Triplett  
Associate General Counsel  
PROGRESS ENERGY FLORIDA, INC.  
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. Gamba  
Florida Bar No. 0027942  
Matthew R. Bernier  
Florida Bar No. 0059886  
CARLTON FIELDS, P.A.  
Post Office Box 3239  
Tampa, FL 33601-3239  
Telephone: (813) 223-7000  
Facsimile: (813) 229-4133

## CERTIFICATE OF SERVICE

I HEREBY CERTIFY a true and correct copy of the foregoing has been furnished to counsel and parties of record as indicated below via electronic and U.S. Mail this 1st day of October, 2012.



\_\_\_\_\_  
Attorney

Keino Young  
Michael Lawson  
Lisa Bennett  
Staff Attorney  
Florida Public Service Commission  
2540 Shumard Oak Blvd  
Tallahassee 32399  
Phone: (850) 413-6218  
Facsimile: (850) 413-6184  
Email: [kyoung@psc.fl.state.us](mailto:kyoung@psc.fl.state.us)  
[mlawson@psc.fl.state.us](mailto:mlawson@psc.fl.state.us)

Charles Rehwinkel  
Associate Counsel  
Erik Sayler  
Associate Counsel  
Office of Public Counsel  
c/o The Florida Legislature  
111 West Madison Street  
Room 812  
Tallahassee, FL 32399-1400  
Phone: (850) 488-9330  
Email: [rehwinkel.charles@leg.state.fl.us](mailto:rehwinkel.charles@leg.state.fl.us)  
[Sayler.erik@leg.state.fl.us](mailto:Sayler.erik@leg.state.fl.us)

Vicki G. Kaufman  
Jon C. Moyle, Jr.  
Moyle Law Firm, P.A.  
118 North Gadsden Street  
Tallahassee, FL 32301  
Phone: (850) 681-3828  
Fax: (850) 681-8788  
Email: [vkaufman@moylelaw.com](mailto:vkaufman@moylelaw.com)  
[jmoyle@moylelaw.com](mailto:jmoyle@moylelaw.com)

Bryan S. Anderson  
Jessica Cano  
Florida Power & Light  
700 Universe Boulevard  
Juno Beach, FL 33408-0420  
Phone: (561) 691-7101  
Facsimile: (561) 691-7135  
Email: [bryan.anderson@fpl.com](mailto:bryan.anderson@fpl.com)  
[Jessica.cano@fpl.com](mailto:Jessica.cano@fpl.com)

Capt. Samuel Miller  
USAF/AFLOA/JACL/ULFSC  
139 Barnes Drive, Ste. 1  
Tyndall AFB, FL 32403-5319  
Phone: (850) 283-6663  
Fax: (850) 283-6219  
Email: [Samuel.Miller@Tyndall.af.mil](mailto:Samuel.Miller@Tyndall.af.mil)

Kenneth Hoffman  
Florida Power & Light  
215 South Monroe St., Ste. 810  
Tallahassee, FL 32301-1858  
Phone: (850) 521-3919  
Fax: (850) 521-3939  
Email: [Ken.Hoffman@fpl.com](mailto:Ken.Hoffman@fpl.com)

Paul Lewis, Jr.  
Progress Energy Florida  
106 East College Avenue, Ste. 800  
Tallahassee, FL 32301-7740  
Phone: (850) 222-8738  
Facsimile: (850) 222-9768  
Email: [paul.lewisjr@pgnmail.com](mailto:paul.lewisjr@pgnmail.com)

James W. Brew  
F. Alvin Taylor  
Brickfield Burchette Ritts & Stone, PC  
1025 Thomas Jefferson St NW  
8th FL West Tower  
Washington, DC 20007-5201  
Phone: (202) 342-0800  
Fax: (202) 342-0807  
Email: [jbrew@bbrslaw.com](mailto:jbrew@bbrslaw.com)  
[ataylor@bbrslaw.com](mailto:ataylor@bbrslaw.com)

Robert Scheffel Wright  
John T. LaVia  
c/o Gardner Law Firm  
1300 Thomaswood Drive  
Tallahassee, FL 32308  
Email: [schef@gbwlegal.com](mailto:schef@gbwlegal.com)

Randy B. Miller  
White Springs Agricultural Chemicals, Inc.  
PO Box 300  
White Springs, FL 32096  
Email: [RMiller@pscphosphate.com](mailto:RMiller@pscphosphate.com)  
(via email only)

Gary A. Davis  
James S. Whitlock  
Davis & Whitlock, P.C.  
61 North Andrews Avenue  
P.O. Box 649  
Hot Springs, NC 28743  
[gadavis@enviroattorney.com](mailto:gadavis@enviroattorney.com)  
[jwhitlock@environattorney.com](mailto:jwhitlock@environattorney.com)

Robert H. Smith  
11340 Heron Bay Blvd.  
Coral Spring, FL 33076  
Email: [rpjrb@yahoo.com](mailto:rpjrb@yahoo.com)  
(via email only)