

BEFORE THE PUBLIC SERVICE COMMISSION

In re: Petition on behalf of Citizens of the State of Florida to require Progress Energy Florida, Inc. to refund customers \$143 million.

DOCKET NO. 060658-EI  
ORDER NO. PSC-07-0266-PHO-EI  
ISSUED: March 29, 2007

Pursuant to Notice and in accordance with Rule 28-106.209, F.A.C., a Prehearing Conference was held on March 21, 2007, in Tallahassee, Florida, before Commissioner Katrina J. McMurrian, as Prehearing Officer.

APPEARANCES:

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On behalf of the Citizens of the State of Florida (OPC).

JOHN T. BURNETT, ESQUIRE, Progress Energy Service Company, LLC, 299 1<sup>st</sup> Avenue North, P. O. Box 14042, St. Petersburg, FL 33733-4042, and JAMES MICHAEL WALLS, ESQUIRE, and DIANNE M. TRIPLETT, ESQUIRE, Carlton Fields, P. O. Box 3239, 4221 West Boy Scout Blvd., Tampa, FL 32607-5736  
On behalf of PROGRESS ENERGY FLORIDA, INC. (PEF).

MICHAEL B. TWOMEY, SR., ESQUIRE, P. O. Box 5256, Tallahassee, Florida 32314-5256  
On behalf of AARP (AARP).

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On behalf of the Office of the Attorney General, State of Florida (AG).

JOHN W. MCWHIRTER, JR., ESQUIRE, McWhirter, Reeves & Davidson, P. A., 400 North Tampa Street, Suite 2450, Tampa, Florida 33601-3350  
On behalf of Florida Industrial Power Users Group (FIPUG).

JAMES W. BREW, ESQUIRE, Brickfield, Burchette, Ritts & Stone, P. C., 1025 Thomas Jefferson Street, NW, Eighth Floor, West Tower, Washington, D.C. 20007-5201  
On behalf of White Springs Agricultural Chemicals, Inc., d/b/a PCS Phosphate White Springs (White Springs).

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FPSC-COMMISSION CLERK

LISA C. BENNETT, ESQUIRE, LORENA A. HOLLEY, ESQUIRE, and KEINO YOUNG, ESQUIRE, Florida Public Service Commission, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850  
On behalf of the Florida Public Service Commission (Staff).

## **PREHEARING ORDER**

### **I. CASE BACKGROUND**

During the proceedings of the annual fuel hearing, Docket No. 060001-EI, the Office of Public Counsel, on behalf of the Citizens of the State of Florida (OPC), filed a Petition to require Progress Energy Florida (PEF) to refund \$143 million dollars. OPC alleges in its Petition that a PEF refund to the ratepayers is required because of imprudent management of PEF's coal contracts. OPC requested that the hearing on this particular issue be held at a different date from the fuel hearing because of the complexity of the issues involved. PEF agreed to this request, and this docket was established to take up the refund issues. By Order No. PSC-07-0048-PCO-EI, issued January 16, 2007, this matter was scheduled for a formal administrative hearing on April 2-4, 2007.

### **II. CONDUCT OF PROCEEDINGS**

Pursuant to Rule 28-106.211, Florida Administrative Code (F.A.C.), this Prehearing Order is issued to prevent delay and to promote the just, speedy, and inexpensive determination of all aspects of this case.

### **III. JURISDICTION**

This Commission is vested with jurisdiction over the subject matter by the provisions of Chapter 366, Florida Statutes (F.S.). This hearing will be governed by said Chapter, Chapter 120, F.S., and Chapters 25-6, 25-22, and 28-106, F.A.C., as well as any other applicable provisions of law.

### **IV. PROCEDURE FOR HANDLING CONFIDENTIAL INFORMATION**

Information for which proprietary confidential business information status is requested pursuant to Section 366.093, F.S., and Rule 25-22.006, F.A.C., shall be treated by the Commission as confidential. The information shall be exempt from Section 119.07(1), F.S., pending a formal ruling on such request by the Commission or pending return of the information to the person providing the information. If no determination of confidentiality has been made and the information has not been made a part of the evidentiary record in this proceeding, it shall be returned to the person providing the information. If a determination of confidentiality has been made and the information was not entered into the record of this proceeding, it shall be returned to the person providing the information within the time period set forth in Section 366.093, F.S. The Commission may determine that continued possession of the information is necessary for the Commission to conduct its business.

It is the long-standing policy of this Commission that all Commission hearings be open to the public at all times. The Commission also recognizes its obligation pursuant to Section 366.093, F.S., to protect proprietary confidential business information from disclosure outside the proceeding. Therefore, any party wishing to use any proprietary confidential business information, as that term is defined in Section 366.093, F.S., at the hearing shall adhere to the following:

- (1) When confidential information is used in the hearing, parties must have copies for the Commissioners, necessary staff, and the court reporter, in red envelopes clearly marked with the nature of the contents and with the confidential information highlighted. Any party wishing to examine the confidential material that is not subject to an order granting confidentiality shall be provided a copy in the same fashion as provided to the Commissioners, subject to execution of any appropriate protective agreement with the owner of the material.
- (2) Counsel and witnesses are cautioned to avoid verbalizing confidential information in such a way that would compromise confidentiality. Therefore, confidential information should be presented by written exhibit when reasonably possible.

At the conclusion of that portion of the hearing that involves confidential information, all copies of confidential exhibits shall be returned to the proffering party. If a confidential exhibit has been admitted into evidence, the copy provided to the court reporter shall be retained in the Office of Commission Clerk's confidential files. If such material is admitted into the evidentiary record at hearing and is not otherwise subject to a request for confidential classification filed with the Commission, the source of the information must file a request for confidential classification of the information within 21 days of the conclusion of the hearing, as set forth in Rule 25-22.006(8)(b), F.A.C., if continued confidentiality of the information is to be maintained.

#### V. PREFILED TESTIMONY AND EXHIBITS; WITNESSES

Testimony of all witnesses to be sponsored by the parties (and Staff) has been prefiled and will be inserted into the record as though read after the witness has taken the stand and affirmed the correctness of the testimony and associated exhibits. All testimony remains subject to timely and appropriate objections. Upon insertion of a witness' testimony, exhibits appended thereto may be marked for identification. Each witness will have the opportunity to orally summarize his or her testimony at the time he or she takes the stand. Summaries of each witnesses' testimony shall be pursuant to the time limits set forth in Section XIV of this Prehearing Order.

Witnesses are reminded that, on cross-examination, responses to questions calling for a simple yes or no answer shall be so answered first, after which the witness may explain his or her answer. After all parties and Staff have had the opportunity to cross-examine the witness, the exhibit may be moved into the record. All other exhibits may be similarly identified and entered into the record at the appropriate time during the hearing.

The Commission frequently administers the testimonial oath to more than one witness at a time. Therefore, when a witness takes the stand to testify, the attorney calling the witness is directed to ask the witness to affirm whether he or she has been sworn.

VI. ORDER OF WITNESSES

As a result of discussions at the prehearing conference, each witness whose name is followed by an asterisk (\*) may be excused from this hearing if no Commissioner assigned to this case seeks to cross-examine the particular witness. Parties shall be notified as to whether any such witness shall be required to be present at hearing. The testimony of excused witnesses will be inserted into the record as though read, and all exhibits submitted with those witnesses' testimony, as shown in Section IX of this Prehearing Order, shall be identified and admitted into the record. Each witness whose name is preceded by a plus sign "+" will present direct and rebuttal testimony together.

<u>Witness</u>	<u>Proffered By</u>	<u>Issues #</u>
<u>Direct</u>		
Robert S. Sansom	OPC	1, 2, 4
Patricia Merchant*	OPC	4
Steven M. Fetter	PEF	1, 2,3
Donna M. Davis	PEF	1, 3, 4, 5
Albert W. Pitcher	PEF	1, 3, 4, 5
Sasha Weintraub	PEF	1, 3, 4, 5
+James N. Heller <sup>1</sup>	PEF	1, 4, 5
John W. Dean	PEF	1, 4, 5
Lori Cross*	PEF	4
Rod Hatt	PEF	1, 4, 5
Clifford Wayne Toms	PEF	1, 5
J. Michael Kennedy	PEF	1, 5

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<sup>1</sup> Mr. Heller's testimony shall be taken up out of order on Wednesday, April 4, 2007.

Jon Franke	PEF	1, 5
Hub Miller	PEF	1, 5
Benjamin J. Crisp	PEF	1, 4, 5
Stephen A. Stewart	AARP	1,2, 5
Bernard M. Windham	Staff	1

<u>Witness</u>	<u>Proffered By</u>	<u>Issues #</u>
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Rebuttal

Robert S. Sansom	OPC	1, 4
Joseph Barsin	OPC	1
David Putman	OPC	1
Stephen Smallwood, P. E.	OPC	1
Dan Lawton	OPC	2, 3
Todd H. Bohrmann	OPC	2,3

VII. BASIC POSITIONS

**OPC:** Recognizing that a projected fuel cost recovery clause allows utilities to begin collecting costs of fuel from customers before it has sufficient information on which to determine the prudence of those costs, in Order Nos. 12645, 13452 the Commission addressed the manner in which it would protect customers' interests following the initial approval of collections. The Commission adamantly rejected efforts to limit its ability to consider prudence issues to a specific time frame, and instead stated it would not adjudicate prudence until all relevant facts were before it. The Commission noted the "trade-off" between the benefit to utilities of collections near in time to the incurrence of costs, on the one hand, and the uncertainty attached to the possibility of a later finding of imprudence, on the other. The principle and the message were clear. The burden of proof is on the requesting utility; all of the information is in the possession of the utility; if the utility decides to present less than all relevant facts bearing on prudence, the

consequence—the “trade-off”—will be a degree of uncertainty and the possibility of a disallowance in the event Staff or parties subsequently present evidence of imprudence. That is the structure that PEF accepted when it submitted information in support of its requests that was incomplete, that Citizens invoke with their Petition, and that the Commission must apply to the decision in this case.

In this case Citizens’ evidence proves that, between 1996 and 2005, PEF purchased bituminous coal and “synfuel” for Crystal River Units 4 and 5—much of it from affiliates-- when ratepayers had paid for the capability to burn a 50/50 blend of Powder River Basin sub bituminous and bituminous coals, and when PEF knew, or should have known, that Powder River Basin coal had become more economical than bituminous coal in the early 1990s. Further, OPC’s evidence will show that in 1996 PEF took steps to surrender its environmental authority to burn subbituminous coal at the same time other southeastern utilities were converting to Powder River Basin coal to lower customers’ fuel costs. Later, when in discovery OPC learned that PEF had not selected the lowest bidder to its coal RFP—a fact not disclosed in PEF’s own presentation-- PEF justified its award to others, including its affiliate, on the grounds it is not authorized to burn PRB coal. The decision to allow the ability to burn sub bituminous coal to lapse after having spent ratepayers’ money to build a unit capable of burning the fuel, and the attempt to rely on that very imprudence to justify buying higher priced fuel, are relevant facts that, in conjunction with the shift in relative economics of PRB and bituminous coals, constitute a basis for requiring PEF to refund the extra costs that customers bore during 1996-2005.

PEF’s efforts to discount its ability to have operated CR4 and CR5 at the same high output levels with the blend as it experienced with bituminous coal simply are not credible. PEF specified the 50/50 PRB/bituminous blend as the “design basis” of the units, and Black & Veatch, Babcock & Wilcox, and other vendors conservatively designed the units around the assumption they would be fueled by n the blend. PEF specified units that are capable of operating at “maximum continuous capability” (5% overpressure) without limitation when operating with the blend, and accepted the units as meeting its specifications without first testing them with the blend. PEF’s own documents establish that the ability of the boiler/steam generator to support operations at 5% overpressure and the maximum MW capability on a sustained basis WHEN USING THE 50/50 DESIGN BASIS BLEND OF COALS was always a fundamental design criterion. It was part of Black and Veatch’s original proposal; it was incorporated in the utility’s contract documents; it is codified in the design manual that contains the unit’s specifications and operating parameters.

PEF cannot now bootstrap its own decision to not test the unit with the design basis coal into an opportunity to speculate that the units might not have met the

guaranteed standard of performance. Either PEF was so confident the units would burn the mixture at the PEF-specified maximum output successfully that it regarded the test as unnecessary, in which case its current claims are contradictory, self-serving, and lacking in credibility, or PEF imprudently waived the opportunity to test the units when it could enforce vendor commitments, in which case the Commission should shield customers from all higher costs resulting from the imprudence.

Over time numerous utilities have successfully burned hundreds of millions of tons of PRB coal. Safety concerns associated with PRB coal were and are manageable with appropriate storage and handling protocols and meticulous housekeeping. Because the capability to burn the 50/50 mixture had been expensively designed into the units at the outset, during 1996-2005 the substantial fuel savings calculated by Robert Sansom were available to PEF and its customers at very low additional cost.

Citizens' witness Robert Sansom calculates the overcharges for each year during the period 1996-2005. For the full ten year period that is the subject of the Petition, the overcharges total \$134.5 million, exclusive of interest.

**PEF:**

This proceeding is about OPC's allegation that PEF should have purchased and burned an equal blend of sub-bituminous coal from the Powder River Basin (PRB) with bituminous coal at PEF's Crystal River compliance coal units 4 and 5 (CR4 and CR5) from 1996 to 2005. OPC's allegation originated when OPC learned that PEF was evaluating PRB coal blends at CR4 and CR5 in 2004 and 2005. OPC asks now why PEF didn't do so over ten (10) years earlier despite the fact that no one – not OPC, the Commission staff, nor any other intervener – thought this was an issue over the past decade through fourteen (14) fuel clause dockets and proceedings. OPC's allegations are wrong, based on improper hindsight review and constitute illegal retroactive ratemaking in violation of PEF's due process rights. Apart from the illegality, OPC's decade-old "Monday morning quarterbacking" creates significant regulatory uncertainty regarding billions of dollars of fuel costs passed through to customers in the fuel clause proceedings each year. For all of these reasons, as demonstrated by PEF in its testimony, exhibits, pleadings and motions in this proceeding, OPC's petition should be denied.

PEF presented, and this Commission approved, all of the fuel costs during prior fuel cost recovery clause proceedings for each of the last ten years, which are questioned now by OPC. In each proceeding, OPC, Staff, and others have been provided information on exactly the type of coal purchased and what it cost at all of the Company's coal units including CR4 and CR5. The Commission Staff admittedly received and collected such information from other Florida and out-of-state utilities. PEF provided additional information regarding its coal purchases and costs in discovery, when asked for it, and the Company and Progress Fuels

Corporation (PFC) routinely met with Staff, OPC, and others to explain the coal procurement strategies and decisions for CR4 and CR5. The Company has been an open book with respect to its coal procurement process and decisions over the past decade. No one believed the Company's coal procurement decisions fell outside the range of reasonable business judgment with respect to the issue of PRB coal blends at CR4 and CR5 compared to the decisions the Company made for coal at CR4 and CR5.

During these fourteen (14) fuel clause proceedings over the past decade the Commission Staff and Commission reviewed and approved for collection billions of dollars in fuel costs, including the costs of coal procured and burned at CR4 and CR5, from PEF's customers. No one can reasonably suggest that there was no determination that such costs were reasonable and prudent before PEF was allowed to collect them from customers. Indeed, at no time has the Commission even entertained a separate proceeding to determine prudence beyond the fuel clause proceedings themselves. Any decision by the Commission to re-visit its prior orders on the allegations in this proceeding is improper retroactive ratemaking, violates PEF's due process rights, and necessarily will undermine the regulatory certainty the Commission and utilities, and their customers, now enjoy to the detriment of the utility and its customers, who will undoubtedly face higher costs as a result. Such a decision will also unnecessarily bog down the current fuel proceedings with more and more information as utilities speculate on what information will be considered important to the Commission, OPC, and others to ensure that utility management decisions are not questioned years or even decades later. The fuel proceedings do not currently work this way and there is no need for them to change. As a result, absent some proof of concealment of material information, which does not exist here, there is no basis in law or policy for the Commission to re-visit its prior orders in the fuel clause proceedings over the past decade. Such a result is fundamentally unfair to the Company under principles of retroactive ratemaking, administrative finality, and due process.

In any event, PEF's coal procurement processes, decisions, and purchases for CR4 and CR5 over the past decade, as reflected in PEF's direct and rebuttal testimony and exhibits, were reasonable and prudent. PFC regularly issued Requests for Proposals ("RFPs") for bituminous and sub-bituminous coals for CR4 and CR5 and participated in spot market purchases in response to offers when reasonable to do so. Coals offered in response to PFC's RFPs and in the spot offers were selected when most cost-effective to purchase them, considering the delivered and evaluated cost, and their availability for delivery under given market conditions or other constraints. PEF did not favor affiliates, but treated them equally with other suppliers, as demonstrated by PEF's purchases of coals from non-affiliates and foreign suppliers when cost effective to do so. Again, *all* of PEF's coal transactions were public and made available to the Commission, OPC, and every other intervener *at the time PEF made the purchases*.



When PRB coal producers submitted bids, PEF evaluated them along with all other bids. In 2003, the Company looked at PRB coals for a possible test burn even though they were higher, on an evaluated cost basis, than foreign coals at that time. The Company began its investigation into the possible use of PRB coal blends at CR4 and CR5 with a test burn in 2004 followed by continued, more detailed evaluation and testing of PRB coal blends in 2005 and 2006 following the hurricane-impacted year of 2004. In the midst of this evaluation of a possible coal switch at CR4 and CR5, OPC filed its Petition.

No one disputes that PEF reasonably and prudently purchased and burned bituminous coals only at CR4 and CR5 from the time they became operational in 1982 and 1984 until the mid-90's. No one can reasonably dispute that a decision to switch from one type of coal to another type or a blend of types is a significant decision requiring the considered evaluation of all impacts on the purchase, transportation, storage and handling of the coals and the handling and operation of the units with the coals. This is especially the case with the highly volatile and combustible PRB coal and with CR4 and CR5 located next to PEF's CR3 nuclear plant. This is also especially the case for CR4 and CR5 which are base load units that have consistently produced capacity and energy at full capacity at 750 to 770 gross megawatts, well above the design rating for the units, because of the quantity and quality of coal burned in the units. PEF's customers, therefore, have received the benefits of the larger boilers to accommodate an equal blend of bituminous and PRB coals from burning large quantities of high Btu bituminous coal. This production cannot reasonably be expected to be replaced with the admittedly lower Btu content PRB coals in the PRB and bituminous blend. Considering the impact of hundreds of millions of dollars in lost capacity and energy from a de-rate of CR4 and CR5 from 1996 to 2005, PEF's actions certainly are not unreasonable or imprudent. Quite to the contrary, as PEF's witness Crisp demonstrates, PEF's superior coal procurement strategies have saved customers conservatively over a half a billion dollars.

Additionally, despite the fact that the boilers were designed to accommodate an equal blend of PRB and bituminous coals in the late 70's the design and construction of the units lack the necessary equipment to safely, efficiently, and effectively handle and operate the units on an equal blend of PRB coals and bituminous coals. One cannot reasonably dispute, for example, the reasonable business judgment to add fire detection and suppression equipment and devices that do not exist at CR4 and CR5, for example, as part of any consideration of handling and burning a PRB coal and bituminous coal blend at CR4 and CR5. For all these reasons, tens of millions of dollars in capital and maintenance upgrades must be made for the units to burn this blend safely and effectively. The Company must further evaluate the impact of any decision to bring PRB coals on site for a PRB and bituminous coal blend, as OPC suggests, on the operation of the Company's nuclear unit CR3, given the proximity of the PRB coals to the unit and the undisputed characteristics of PRB coals. Were PEF to use PRB blends, as

OPC suggests, CR3 would be the only nuclear unit in the United States, and quite possibly the world, that is co-located with a PRB coal plant. These are facts that are not accounted for at all by OPC and, by any measure of reasonable business judgment, add to the cost of considering a fuel switch to PRB coal and bituminous blends.

No prudent utility looks only at the delivered price to determine what coal to buy. A prudent coal procurement decision-making process involves the analysis of myriad other factors that can affect the delivery, transportation, handling, and operation of the unit to reasonably and prudently determine the best coal for a particular unit. As long as PEF's analysis of these additional factors was *reasonable*, it does not matter whether other experts or persons would have done the analysis a different way. Therefore, to the extent that OPC's witnesses agree that certain evaluations should have been done, because PEF conducted these evaluations in a *reasonable* way, PEF must have been prudent in its evaluation. OPC's Petition requires the Commission to second-guess the Company and essentially make management decisions that should be made by the Company. Given all the considerations involved with making a fuel switch of this nature, and considering what the Company knew at the time it was making its coal procurement decisions, PEF acted prudently and reasonably in its decisions to procure the coal that it purchase for CR4 and CR5 from 1996 to 2005.

OPC's Petition should be denied in its entirety.

In this proceeding, AARP has presented testimony to support a claim that the Commission should impose a penalty on PEF, if the Commission orders a refund as requested in OPC's Petition. As explained in detail above, PEF's coal purchases for CR4 and CR5 have been reasonable and prudent. Thus there is no basis for any refund of any fuel charges recovered through the fuel clause, and accordingly there is no basis for any penalty. Furthermore, the Commission can only impose a penalty upon a showing that a utility willfully violated or refused to comply with a statute or a Commission order or rule. There has been *no* showing that PEF has violated any such statute, order, or rule. Indeed, neither AARP nor its witness has even identified the statute, order, or rule which it claims that PEF violated. AARP's request for a penalty should be denied.

**AARP:**

AARP adopts Public Counsel's General Position and additionally states that the Commission should impose a penalty on PEF if it determines that PEF willfully violated any lawful rule or order of the Commission or any provision of Chapter 366, Florida Statutes, by purchasing more expensive fuel from affiliated companies than was otherwise available from non-affiliated companies. AARP considers that the penalty is necessary under these circumstances to deter future willful violations by this utility and others because merely making a utility return the fruits of its willfully imprudent behavior, even with interest, is insufficient.

AARP believes the penalty, if one is warranted, should be ten percent of the amount of the refund ordered.

**AG:** Adopts the position of the Office of Public Counsel.

**FIPUG:** Progress Energy acted imprudently in its acquisition of coal between 1996 and 2005. The regulated utility has a duty to its customers to purchase and utilize fuel in a manner that is in the best interest of its retail customers. In keeping with this obligation it increased the construction cost and corresponding rate base for Crystal River Units 4 and 5 to burn a blend of bituminous coal and sub bituminous coal products to save fuel cost, but then failed to acquire less expensive coal when it became available to the detriment of retail customers.

Progress exacerbated the imprudence by abandoning its air permit authority to burn sub bituminous coal in 1996 and acquired coal from an affiliated non regulated company at prices higher than western coal that was available over subsequent years to the further detriment of its retail customers.

Independent evidence developed by the Commission staff confirms OPC's witnesses' findings that Progress paid above market prices for coal during the period from 1996 through 2005 that were 10 to 50% higher than the cost of coal acquired by other utilities located in the southeast.

**White Sprgs:** PCS White Springs adopts Public Counsel's General Position and further adopts the AARP position with respect to further Commission action if it determines that PEF willfully violated any lawful rule or order of the Commission or any provision of Chapter 366, Florida Statutes, by purchasing more expensive fuel from affiliated companies than was otherwise available from non-affiliated companies.

**STAFF:** Staff's positions are preliminary and based on materials filed by the parties and on discovery. The preliminary positions are offered to assist the parties in preparing for the hearing. Staff's final positions will be based upon all the evidence in the record and may differ from the preliminary positions.

## VIII. ISSUES AND POSITIONS

**ISSUE 1:** Did PEF act prudently in purchasing coal for Crystal River Units 4 and 5 beginning in 1996 and continuing to 2005?

### **POSITIONS:**

**OPC:** No. To achieve flexibility, PEF designed and built Crystal River 4 and 5 to be able to burn a 50/50 blend of subbituminous and bituminous coals. In the early 1990s the discovery of higher Btu subbituminous Powder River Basin coal and

competition between railroads caused PRB coal to become significantly cheaper (delivered) than the eastern bituminous coal PEF was burning in CR4-5. As other utilities turned to Powder River Basin coal to lower fuel costs borne by customers, PEF continued to purchase more expensive bituminous coal and “synfuel” from its affiliates and pass the extra costs on to customers. PEF knew, or should have known, of the opportunity presented by PRB, and should have acted timely to lower its fuel costs during 1996-2005. There was no impediment between a management acting prudently in its customers’ interests and significantly lower fuel costs.

**PEF:** Yes. PEF’s coal purchases for CR4 and CR5 over the past decade, as reflected in PEF’s direct and rebuttal testimony and exhibits, were reasonable and prudent. PFC regularly issued Requests for Proposals (“RFPs”) for bituminous and sub-bituminous coals for CR4 and CR5 and participated in spot market purchases in response to offers when reasonable to do so. Coals offered in response to PFC’s RFPs and in the spot offers were selected when most cost-effective to purchase them, considering the delivered and evaluated cost. No prudent utility looks only at the delivered price to determine what coal to buy. A prudent coal procurement decision-making process involves the analysis of myriad other factors that can affect the delivery, transportation, handling, and operation of the unit to reasonably and prudently determine the best coal for a particular unit. When considering these factors, it is clear that PEF acted prudently.

**AARP:** AARP adopts the Public Counsel’s Positions.

**AG:** Adopts the position of the Office of Public Counsel.

**FIPUG:** No.

**White Sprgs:** Adopts the Public Counsel’s Position.

**STAFF:** No position at this time.

**In determining Issue 1, the Commission may consider, but is not limited to, the following:**

**Environmental Permitting**

**OPC:** The Siting Board’s certification order terms allowed PEF to burn the 50/50 blend in CR4-5. Subsequently, PEF jettisoned subbituminous coal from its application for its first federal “Title V” permit. Since 2000 (when that permit took effect) PEF has not been authorized to burn PRB coal in units designed to burn it. Having ensured that result, in this case PEF first pointed to its limited permit as justification for not purchasing cheap PRB, yet now claims the same omission was “no harm, no foul.” PEF’s permitting conduct was as conspicuously imprudent as its explanations are contradictory and disingenuous.

**PEF:** PEF acted reasonably and prudently in obtaining environmental permits for CR4 and CR5. From when the units came online until the mid-90's, no one disputes that PEF was burning and should have burned bituminous coal. PEF did not have unconditional authority to burn a blend of sub-bituminous coal, because it could not be assured that the units would remain in compliance with emissions limitations. Furthermore, given the time needed to obtain a permit modification, compared to the time needed to make operational changes, there would be no detriment to PEF or the ratepayer caused by waiting to change these permits.

**AARP:** AARP adopts the Public Counsel's Positions.

**AG:** Adopts the position of the Office of Public Counsel.

**FIPUG:** PEF should have acted to obtain the permits required to burn sub bituminous coal in its boiler.

**White Sprgs:** Adopts the Public Counsel's Positions.

**STAFF:** No position at this time.

#### **Coal Procurement Practices**

**OPC:** During 1996-2005 PEF's coal procurement practices favored affiliates over more economical alternatives. PEF's claim that PRB producers were disinterested marketers contradicts market information and simply is not credible. PEF failed to exploit its flexible transportation modes so as to accommodate the cheapest fuel. Other flaws in PEF's practices include the failure to position itself to shift to the 50% PRB blend timely by maintaining environmental authority and conducting any needed stack tests.

In its inadequate 2004 "supplemental" solicitation, PEF's affiliate was the only producer of Appalachian bituminous coal that PEF contacted..

**PEF:** PFC regularly issued RFPs for bituminous and sub-bituminous coals for CR4 and CR5 and participated in spot market purchases in response to offers when reasonable to do so. PFC sent the RFPs to a large list of coal suppliers, and the RFPs were provided to coal trade publications. Coals offered in response to PFC's RFPs and in the spot offers were selected when most cost-effective to purchase them, considering the delivered and evaluated cost, and their availability for delivery under given market conditions or other constraints. When PRB coal producers submitted bids, PEF evaluated them along with all other bids.

**AARP:** AARP adopts the Public Counsel's Positions.

**AG:** Adopts the position of the Office of Public Counsel.

**FIPUG:** PEF or its affiliate imprudently failed to take advantage of the opportunity to acquire a less expensive coal brought about by competitive forces in the industry.

**White Sprgs:** Adopts the Public Counsel's Positions.

**STAFF:** No position at this time.

**CR-3**

**OPC:** CR3 was nuclear in 1978, when PEF designed and sought state certification of CR4-5 to burn PRB, and still nuclear in 2006, when PEF applied to modify its federal permits to authorize burning PRB in CR4-5. Only the period 1996-2005 covered by OPC's Petition is the subject of PEF's "CR3 concern." If applicable, prudence would have required PEF to attend to any NRC information requirements at the outset, so that it would be positioned to burn PRB when economical to do so. CR1-2 boilers are far closer to CR3 than are CR4-5 and pose greater risks.

**PEF:** Part of the evaluation to switch to a PRB blend must include the impact on the operation of the Company's nuclear unit CR3, given the proximity of the PRB coals to the unit and the undisputed characteristics of PRB coals. Were PEF to use PRB blends, as OPC suggests, CR3 would be the only nuclear unit in the United States, and quite possibly the world, that is co-located with a PRB coal plant. Nuclear regulations require evaluation of this additional risk to assess whether CR3 can be safely operated with PRB coal on-site, adding time and expense to the analysis.

**AARP:** AARP adopts the Public Counsel's Positions.

**AG:** Adopts the position of the Office of Public Counsel.

**FIPUG:** CR3 became commercially operable in 1977. CR4 and CR5 were designed to burn PRB coal and came on line in 1984 and 1985 respectively. If CR3 is a problem PEF was imprudent in accepting the design of plants that could not perform as promised. Consumers should not be required to bear the risk of PEF imprudence.

**White Sprgs:** Adopts the Public Counsel's Positions on Issue 1.

**STAFF:** No position at this time.

**CR-4 & CR-5 Operational Matters**

**OPC:** Based on ample historical data, CR4-5 boilers were designed super-conservatively to handle coal having slagging and fouling properties more severe than the 50% PRB design basis blend.

Existing blending equipment is adequate, and replacement unnecessary and wasteful.

Because *all* systems were designed and sized to sustain 5% overpressure with 50% PRB, the only capital costs associated with burning the blend relate to dust and fire suppression, and only to the extent they exceed the equipment that PEF allowed to deteriorate.

PRB can be managed safely through appropriate methods and meticulous housekeeping, matters that prudent management acting in customers' interests would have undertaken to garner savings.

Test burns need not take longer than 2-3 weeks. Moreover, had PEF prudently conducted test burns of the 50/50 design blend when CR4-5 were new, PEF would have been positioned to purchase and burn PRB coal when it became the economical choice.

**PEF:** Despite the fact that the boilers were designed to accommodate an equal blend of PRB and bituminous coals in the late 70's, the design and construction of the units lack the necessary equipment to safely, efficiently, and effectively handle and operate the units on an equal blend of PRB coals and bituminous coals. State of the art technology for dealing with PRB coal as it evolved through the mid-1980s to today is different from what was known when the units were designed. In addition, many of the additional components which were designed were not actually built. Tens of millions of dollars in capital and maintenance upgrades must therefore be made for the units to burn this blend safely and effectively. Furthermore, to the extent that any components, like the larger boiler, were built into the plant, the ratepayer has received the benefit because the units have produced additional megawatts.

**AARP:** AARP adopts the Public Counsel's Positions.

**AG:** Adopts the position of the Office of Public Counsel.

**FIPUG:** Assuming a 25 year life for CR4&5 PEF has all but fully recovered its investment in these generating units which still have a remaining useful life. Consumers are still paying a depreciation charge in their base rates to amortize the units. Mr. Hatt concludes that \$48 to 73 million needed to be spent to add the plant components that were used to estimate plant cost when a certificate of need was rendered and the

components he concludes are necessary today in light of operating experience. Whichever estimate is correct, the continuing depreciation charge is fully sufficient to amortize the capital cost needed to have obtained the requisite fuel cost saving with no increase in base rates.

According to the Hatt estimate to burn PRB coal it would cost \$1.8 million a year to burn sub bituminous coal. It would be imprudent not to expend this amount to obtain the savings that could have been obtained in the past and in the future.

**White Sprgs:** Adopts the Public Counsel's Positions.

**STAFF:** No position at this time.

**Megawatt Capacity**

**OPC:** The limiting factor on CR4-5 megawatt production is "5% overpressure," the maximum safe boiler operating pressure. At 5% overpressure the turbine produces the same megawatts, regardless of the fuel being burned. CR4-5 were explicitly designed and built to supply, without limitation, 5% overpressure steam to the turbine when burning the 50/50 blend. As specified and built, all systems, including the six pulverizers and the coal supply system, have ample capacity to sustain 5% overpressure. *Before* OPC filed its petition, PEF's consulting engineers assessed the units and predicted no derating below 70% PRB blend.

**PEF:** CR4 and CR5 have consistently produced 750 to 770 gross megawatts, because of the bituminous coal burned in the units. This production will not be possible with the lower Btu content of a 50/50 PRB and bituminous blend. The Black & Veatch and Babcox and Wilcox documents for these units do not provide a guaranteed megawatt output when burning the design sub-bituminous and bituminous coal blend. The only arguable guarantee beyond unit efficiency is for a steam output which produces 665 megawatts, the nameplate ratings for the units. It would cost millions of dollars to replace these lost megawatts.

**AARP:** AARP adopts the Public Counsel's Positions.

**AG:** Adopts the position of the Office of Public Counsel.

**FIPUG:** Evidence offered by OPC indicates there would be no substantial derating that would off set the anticipated fuel savings that would arise from selecting a less expensive coal supply

**White Sprgs:** Adopts the Public Counsel's Positions.

**STAFF:** No position at this time.



**Coal Availability and Costs**

**OPC:** PRB coal was available to PEF in large quantities and at costs significantly lower than alternatives during 1996-2005. Pertinent market information was disseminated widely in the utility industry at the time. Actual purchases of PRB by TECO, adjusted for delivery to Crystal River, provide an accurate picture of the opportunity that was available to PEF (but not acted on) during the period, as do bids submitted to PEF by PRB producers in 2003 and 2004. The notion that the same PRB producers who were marketing aggressively elsewhere elected to bypass CR4-5 simply is not credible.

**PEF:** PEF cannot purchase what it is not offered. Although PEF's RFPs included specifications for sub-bituminous coal, and these RFPs were sufficiently available to the market, in some years no PRB bids were received. Even when PEF received PRB bids, prior to 2004, PRB coal, on a delivered and evaluated price basis, did not compete with the bituminous coal PEF purchased. PEF reasonably and prudently evaluated PRB coal using the existing market proxy for waterborne transportation costs in place for water deliveries of coal for all Crystal River coal plants. When PRB coal appeared economical, PEF began a more thorough evaluation.

**AARP:** AARP adopts the Public Counsel's Positions.

**AG:** Adopts the position of the Office of Public Counsel.

**FIPUG:** FIPUG believes the evidence presented by OPC is more credible on this subject.

**White Sprgs:** Adopts the Public Counsel's Positions.

**STAFF:** No position at this time.

**Affiliates**

**OPC:** PEF failed to identify subbituminous coal as a fuel for CR4-5 in its Title V application, but later amended that application to seek authority to burn "synfuel" purchased from affiliates. The "synfuel" purchases, which as with bituminous coal were more expensive than PRB during 1996-2005, helped enable parent Progress Energy to realize tax credits and synfuel-related revenues valuable to the corporation but not its customers, who forewent the opportunity afforded by PRB to lower fuel costs. In these and other particulars, PEF subordinated customers' interests to affiliates' profits.

**PEF:** PEF did not favor affiliates, but treated them equally with other potential coal suppliers, as demonstrated by PEF's purchases of coals from non-affiliates and foreign suppliers when cost effective to do so. PEF also evaluated synfuel on the

same basis, choosing synfuel when it was the lowest total cost coal offered, rather than to benefit any affiliate. Indeed, PEF purchased synfuel from suppliers other than its affiliates.

**AARP:** AARP adopts the Public Counsel's Positions.

**AG:** Adopts the position of the Office of Public Counsel.

**FIPUG:** If the evidence discloses that PEF paid more for coal in order to benefit the non regulated affiliate the penalty demanded by AARP will be in order.

**White Sprgs:** Adopts the Public Counsel's Positions.

**STAFF:** No position at this time.

**Other Factors**

**OPC:** Barge Rates – PEF witnesses wrongly employ a “waterborne proxy” barge rate when arriving at the delivered cost of PRB coal for purposes of comparisons. The “Waterborne proxy” approved by the Commission was by its terms applicable only to specific river routes. It was inapplicable to movements of western PRB coal, and PEF's assumed but unauthorized version is more expensive than market rates reflected in real transaction data. By using an unauthorized and inflated barge rate assumption rather than actual rates, PEF artificially increases the cost of the PRB alternative in its calculations.

**PEF:** With respect to the issues above and identified in the evidence in this case, as long as PEF acted *reasonably* in its fuel procurement decisions, it does not matter whether others would have acted differently. OPC's Petition requires the Commission to second-guess the Company and make management decisions that should be made by the Company. Given all the considerations involved with making fuel purchases, and considering what the Company knew at the time it was making its coal procurement decisions, the evidence shows that PEF acted prudently and reasonably in procuring coal for CR4 and CR5 from 1996 to 2005.

**AARP:** AARP adopts the Public Counsel's Positions.

**AG:** Adopts the position of the Office of Public Counsel.

**FIPUG:** None at this time.

**White Sprgs:** Adopts the Public Counsel's Positions.

**STAFF:** No position at this time.

**ISSUE 2:** If the Commission determines that PEF acted imprudently in its coal purchases, should PEF be required to refund customers for coal purchased to run Crystal River Units 4 and 5 during the time period of 1996 – 2005?

**POSITIONS:**

**OPC:** Yes. Under the current system, utilities may collect fuel costs as they are incurred and before providing information sufficient to establish the costs are prudent. The PSC must balance this benefit to utilities with measures adequate to protect customers' interests. Prudence review entails-not only amounts spent-but decisions made regarding alternatives. If a utility elects not to provide all relevant facts, placing time limits on parties' ability to obtain such information from utilities would send the message that a utility which submits comprehensive information is subject to prudence review, but one which holds back may avoid it.

**PEF:** No. Over the past decade, the Commission reviewed and approved for collection billions of dollars in fuel costs, including the costs of coal for CR4 and CR5, from PEF's customers. No one can reasonably suggest that there was no prudence determination before PEF was allowed to collect them from customers. Any decision by the Commission to re-visit its prior orders on the allegations in this proceeding will undermine regulatory certainty, and will unnecessarily bog down current and future fuel proceedings with more information as utilities speculate on what will be considered important to ensure that decisions are not later questioned.

**AARP:** AARP adopts the Public Counsel's Position.

**AG:** Adopts the position of the Office of Public Counsel.

**FIPUG:** Yes.

**White Sprgs:** Adopts the Public Counsel's Positions on Issue 2.

**STAFF:** No position at this time.

**ISSUE 3:** Under the circumstances of this case, does the Commission have the authority to grant the relief requested by OPC?

**POSITIONS:**

**OPC:** Yes. Citizens do not ask the Commission to employ hindsight. In Order Nos. 12645, 13452, and PSC 97-0608-FOF-EI, the Commission recognized it was allowing utilities to collect fuel costs based on partial information, and rejected

attempts to limit the time in which it could revisit past amounts upon receiving facts relevant to prudence. The Florida Supreme Court affirmed the ability of the Commission to make adjustments in the continuous fuel proceeding without engaging in “retroactive ratemaking.” Citizens have presented facts relevant to prudence of PEF’s fuel purchases for CR4-5 (see positions 1,4) that PEF never submitted to the Commission.

**PEF:** No. It is fundamentally unfair to the Company under principles of retroactive ratemaking, administrative finality, and due process to allow the Commission to re-visit its past orders absent some material concealment, which is not present here. Further, OPC’s testimony is replete with examples of impermissible hindsight review. If a refund is required, as OPC alleges, it would place an impossible burden on PEF’s management – the ability to foresee the future. The purpose of not allowing hindsight review is to relieve this burden. The Commission cannot second guess management decisions and that is what OPC asks this Commission to do.

**AARP:** AARP adopts the Public Counsel’s Position.

**AG:** Adopts the position of the Office of Public Counsel.

**FIPUG:** Yes.

**White Sprgs:** Adopts the Public Counsel’s Positions on Issue 3.

**STAFF:** No position at this time.

**ISSUE 4:** If the Commission determines that PEF should be required to refund customers for coal purchased to run Crystal River Units 4 and 5, what amount should be refunded, and how and when should such refund be accomplished?

**POSITIONS:**

**OPC:** The amount of overcharges by year are:

Year	Excess Coal Costs \$	Excess SO <sub>2</sub> Allowance Cost \$	Total Excess Fuel Charges \$
1996	1,056,000	N/A	1,056,000
1997	5,617,376	N/A	5,617,376
1998	7,703,136	N/A	7,703,136
1999	8,412,664	N/A	8,412,664

2000	4,884,739	1,497,278	6,382,017
2001	14,923,313	1,897,541	16,820,854
2002	20,712,248	1,410,049	22,122,297
2003	14,108,871	1,413,510	15,522,381
2004	17,603,768	4,196,799	21,800,567
2005	21,572,511	7,513,540	29,086,051
Total w/o Interest	116,594,626	17,928,717	134,523,343

The total refund is based on the beginning year selected. By 1996 the opportunity to save costs had been fully established; in that year PEF excluded subbituminous coal from its federal permit application.

**PEF:** This issue is dependent on legal, factual, and policy determinations which have not yet been determined.

**AARP:** AARP adopts the Public Counsel's Position.

**AG:** Adopts the position of the Office of Public Counsel.

**FIPUG:** The Commission should determine savings PEF imprudently overlooked. The refund should be amortized over a twelve month period through a reduced fuel factor beginning at the earliest practicable date.

**White Sprgs:** Adopts the position of the Office of Public Counsel.

**STAFF:** No position at this time.

**ISSUE 5:** **If the Commission determines that PEF willfully violated any lawful rule or order of the Commission or any provision of Chapter 366, Florida Statutes, should the Commission impose a penalty on PEF, and what should be the amount of such penalty?**

**POSITIONS:**

**OPC:** No position.

**PEF:** No. PEF's coal purchases for CR4 and CR5 have been reasonable and prudent. Thus there is no basis for any refund of any fuel charges recovered through the fuel clause, and accordingly there is no basis for any penalty. Furthermore, the Commission can only impose a penalty upon a showing that a utility willfully violated a statute or a Commission order or rule. There has been *no* showing that

PEF has violated any such statute, order, or rule. Indeed, no party has even identified the statute, order, or rule which it claims that PEF violated.

**AARP:** Yes, if the Commission determines that PEF willfully violated a rule or order of the Commission or provision of Chapter 366, Florida Statutes, by purchasing more expensive affiliate-supplied coal or coal products than reasonably available non-affiliate coal, then it should be penalized for that behavior by a penalty equal to ten percent of the amount ordered refunded. If PEF is found to have benefited its shareholders and affiliated companies, at the expense of its customers, by purchasing more expensive fuel from affiliated companies than was otherwise available from non-affiliated companies, then a penalty for such behavior is essential if PEF and other regulated companies are to be deterred from similar behavior in the future.

**AG:** Adopts the position of the Office of Public Counsel.

**FIPUG:** YES. If the Commission finds that the potential savings were overlooked in order to enhance non regulated affiliate profits a penalty based upon the nature of the misfeasance should be imposed over and above interest.

**White Sprgs:** If the Commission determines that PEF willfully violated a rule or order of the Commission or provision of Chapter 366, Florida Statutes, by purchasing more expensive affiliate-supplied coal or coal products than reasonably available non-affiliate coal, further Commission action is warranted, and White Springs adopts AARP's position on this issue.

**STAFF:** No position at this time.

**ISSUE 6:** Should this docket be closed?

**POSITIONS:**

**OPC:** If the Commission closes this docket, it should state clearly that parties may pursue related issues for years following 2005 in true-up proceedings or other appropriate proceedings.

**PEF:** Yes.

**AARP:** AARP adopts the Public Counsel's Position.

**AG:** Adopts the position of the Office of Public Counsel.

**FIPUG:** Yes upon completion of the refund.

**White Sprgs:** .No position at this time.

**STAFF:** No position at this time.

IX. EXHIBIT LIST

<u>Witness</u>	<u>Proffered By</u>	<u>I.D. No.</u>	<u>Description</u>
<u>Direct</u>			
Robert S. Sansom	OPC	<u>RS-1</u>	Qualifications
Robert S. Sansom	OPC	<u>RS-2</u>	Babcock & Wilcox and Black & Veatch Design Documents.
Robert S. Sansom	OPC	<u>RS-3</u>	FPC Site Certification Documents.
Robert S. Sansom	OPC	<u>RS-4</u>	FPC Coal Documents – 1980 Certification Application.
Robert S. Sansom	OPC	<u>RS-5</u>	PRB Development.
Robert S. Sansom	OPC	<u>RS-6</u>	EPRI & DOE PRB Studies.
Robert S. Sansom	OPC	<u>RS-7</u>	Coal Prices
Robert S. Sansom	OPC	<u>RS-8</u>	Map of 1996 PRB Shipments.
Robert S. Sansom	OPC	<u>RS-9</u>	PRB Shipments to Southeastern Plants.
Robert S. Sansom	OPC	<u>RS-10</u>	Delivered PRB Coal Costs.
Robert S. Sansom	OPC	<u>RS-11</u>	<u>Coal Week</u> – September 23, 1996 re: Miller Plant.
Robert S. Sansom	OPC	<u>RS-12</u>	2005 – 2006 Progress Energy PRB Crystal River Units 4 and 5 Studies.

<u>Witness</u>	<u>Proffered By</u>	<u>I.D. No.</u>	<u>Description</u>
Robert S. Sansom	OPC	<u>RS-13</u>	FPC Briquettes Letters and Related Permits.
Robert S. Sansom	OPC	<u>RS-14</u>	Synfuels to IMT for Crystal River Units 4 and 5 Summary Table.
Robert S. Sansom	OPC	<u>RS-15</u>	Crystal River Units 4 and 5 Sources to IMT 1997 – 2005.
Robert S. Sansom	OPC	<u>RS-16</u>	Synfuels Document Progress Energy's U-9C-3 – Dated September 30, 2001.
Robert S. Sansom	OPC	<u>RS-17</u>	Dock Map.
Robert S. Sansom	OPC	<u>RS-18</u>	September 2004 High Priced Import Purchases.
Robert S. Sansom	OPC	<u>RS-19</u>	\$/MMBtu of Different Coals to Crystal River Units 4 and 5 via IMT Water Route and All Rail.
Robert S. Sansom	OPC	<u>RS-20</u>	Delivered Crystal River Units 4 and 5 Prices Via McDuffie vs. Via IMT.
Robert S. Sansom	OPC	<u>RS-21</u>	PRB Coal Compared with Bituminous Coal/Synfuels to New Orleans.
Robert S. Sansom	OPC	<u>RS-22</u>	PRB Meeting at Crystal River Units 4 and 5.
Robert S. Sansom	OPC	<u>RS-23</u>	FDEP Excerpts from <u>Power Magazine</u> .
Robert S. Sansom	OPC	<u>RS-24</u>	2004 Bids Delivered to Crystal River Units 4 and 5.
Robert S. Sansom	OPC	<u>RS-25</u>	Trade Press on PEF's Coal Solicitations.
Robert S. Sansom	OPC	<u>RS-26</u>	"Overcharges" to PEF Ratepayers: 1996 – 2005.



<u>Witness</u>	<u>Proffered By</u>	<u>I.D. No.</u>	<u>Description</u>
Robert S. Sansom	OPC	<u>RS-27</u>	Overcharges Methodology.
Robert S. Sansom	OPC	<u>RS-28</u>	1976 "Bituminous" Coal Permit Application to FDEP.
Robert S. Sansom	OPC	<u>RS-29</u>	PEF's Failure to Seek a Title V Permit to Continue Crystal River Units 4 and 5's Environmental Authority to Burn Sub-Bituminous Coal.
Patricia Merchant	OPC	<u>PM-1</u>	Discusses the calculation of the interest factor that should be added to the refund of excess fuel charges.
Steven M. Fetter	PEF	<u>SMF-1</u>	Educational and professional background
Donna M. Davis	PEF	<u>DMD-1</u>	Coal procurement policies applicable to coal procurement decisions for CR4 and CR5 during the period of time addressed in my testimony.
Donna M. Davis	PEF	<u>DMD-2</u>	Representative PFC bidder list from 1996 to 2002.
Donna M. Davis	PEF	<u>DMD-3</u>	RFP for CR4 and CR5 from 1996 to 2002.
Donna M. Davis	PEF	<u>DMD-4</u>	Estimated Powder River Basin Origin Transportation Market cost.
Donna M. Davis	PEF	<u>DMD-5</u>	Composite exhibit of the 1998 RFP response list and Kennecott's declination letter in response to that RFP.
Donna M. Davis	PEF	<u>DMD-6</u>	May 2001 RFP

<u>Witness</u>	<u>Proffered By</u>	<u>I.D. No.</u>	<u>Description</u>
Donna M. Davis	PEF	<u>DMD-7</u>	Bidder list for the May 2001 RFP.
Donna M. Davis	PEF	<u>DMD-8</u>	The evaluations of the bid responses to the May 2001 RFP.
Donna M. Davis	PEF	<u>DMD-9</u>	Dennis Edwards' monthly reports on coal procurement.
Donna M. Davis	PEF	<u>DMD-10</u>	Report of FERC Form 423 TECO costs for 1996-2005.
Donna M. Davis	PEF	<u>DMD-11</u>	Cost comparisons with TECO on a generated cost per Kwh basis from 1996 to 2002.
Donna M. Davis	PEF	<u>DMD-12</u>	Cost comparisons with TECO on a generated cost per million Btu basis from 1996 to 2002.
Donna M. Davis	PEF	<u>DMD-13</u>	1996 analysis of PRB and bituminous compliance coals.
Donna M. Davis	PEF	<u>DMD-14</u>	February 9, 1998 memo from Dennis Edwards to Mr. Cumbie.
Donna M. Davis	PEF	<u>DMD-15</u>	1999 estimate of the cost of PRB coal at Crystal River by 2003.
Donna M. Davis	PEF	<u>DMD-16</u>	Agendas for the meetings between PFC, PEF, the Commission Staff, and other interested parties, including OPC, regarding PFC's coal procurement activities.
Donna M. Davis	PEF	<u>DMD-17</u>	Outlines for the meetings between PFC, PEF, the Commission Staff, and other interested parties, including OPC, regarding PFC's coal procurement activities.

<u>Witness</u>	<u>Proffered By</u>	<u>I.D. No.</u>	<u>Description</u>
Donna M. Davis	PEF	<u>DMD-18</u>	Composite exhibit of the results of internal audits for the years 1999-2005 with respect to PFC's coal procurement for the Company Report of FERC Form 423 PEF costs for 1996-2005.
Donna M. Davis	PEF	<u>DMD-19</u>	Report of FERC Form 423 PEF costs for 1996-2005.
Donna M. Davis	PEF	<u>DMD-20</u>	Staff comparison of the waterborne costs for PEF, TECO, and Gulf from 1995 to 2000.
Albert W. Pitcher	PEF	<u>AWP-1</u>	PFC's coal procurement policy in effect when assumed responsibilities.
Albert W. Pitcher	PEF	<u>AWP-2</u>	PFC's evaluation sheets for bids received in response to July 3, 2003 RFP for CR\$ and CR5.
Albert W. Pitcher	PEF	<u>AWP-3</u>	October 2, 2003 memorandum explaining results of July 3, 2003 RFP and PEF's evaluation of that RFP
Albert W. Pitcher	PEF	<u>AWP-4</u>	April 12, 2004 RFP for coal for CR4 and CR5.
Albert W. Pitcher	PEF	<u>AWP-5</u>	RFP bidder list indicating the bidders who received the April 12, 2004 RFP and whether they responded.
Albert W. Pitcher	PEF	<u>AWP-6</u>	June 22, 2004 memorandum explaining April 12, 2004 RFP and PFC's evaluation.
Albert W. Pitcher	PEF	<u>AWP-7</u>	May 13, 2004 test report on PRB sub bituminous and bituminous coals blend at CR4 in late April 2004.

<u>Witness</u>	<u>Proffered By</u>	<u>I.D. No.</u>	<u>Description</u>
Sasha A. J. Weintraub	PEF	<u>SAW-1</u>	Company's coal procurement policy in effect when SAW assumed responsibility for coal procurement.
Sasha A. J. Weintraub	PEF	<u>SAW-2</u>	September 2005 RFP for coals for CR4 and CR5.
Sasha A. J. Weintraub	PEF	<u>SAW-3</u>	Bidder List for September 2005 RFP for coals for CR4 and CR5 identifying who among the recipients of the RFP have responded to it.
Sasha A. J. Weintraub	PEF	<u>SAW-4</u>	Company's summary evaluation of September 2005 RFP.
Sasha A. J. Weintraub	PEF	<u>SAW-5</u>	January 2006 RFP for coals for CR4 and CR5.
Sasha A. J. Weintraub	PEF	<u>SAW-6</u>	Bidder list indicating those suppliers who did or did not respond to January, 2006 RFP.
Sasha A. J. Weintraub	PEF	<u>SAW-7</u>	Company's coal procurement plan for January – February 2006 RFP.
Sasha A. J. Weintraub	PEF	<u>SAW-8</u>	May 24, 2005 Strategic Engineering Update Report on use of PRB coal at Progress Energy.
Sasha A. J. Weintraub	PEF	<u>SAW-9</u>	Strategic Engineering May 9, 2005 report on Potential for PRB Coal Use at Progress Energy.
Sasha A. J. Weintraub	PEF	<u>SAW-10</u>	Strategic Engineering Update Report on Potential for PRB Coal Use at Progress Energy dated June 22, 2005.

<u>Witness</u>	<u>Proffered By</u>	<u>I.D. No.</u>	<u>Description</u>
Sasha A. J. Weintraub	PEF	<u>SAW-11</u>	Strategic Engineering Update Report on Potential for PRB Coal Use at Progress Energy dated July 14, 2005.
Sasha A. J. Weintraub	PEF	<u>SAW-12</u>	Strategic Engineering Update Report on Potential for PRB Coal Use at Progress Energy dated August 18, 2005.
Sasha A. J. Weintraub	PEF	<u>SAW-13</u>	Financial Evaluation of PRB Coal Use at Progress Energy's Crystal River 4 and 5 Units Report dated August 22, 2005.
Sasha A. J. Weintraub	PEF	<u>SAW-14</u>	Sargent & Lundy Powder River Basin Coal Conversion Study report for CR4 and CR5 dated October 14, 2005.
Sasha A. J. Weintraub	PEF	<u>SAW-15</u>	PRB Potential at CRN Plant Update Report dated September 27, 2005.
Sasha A. J. Weintraub	PEF	<u>SAW-16</u>	Crystal River 5 PRB/CAPP Blend May 2006 Test Report.
Sasha A. J. Weintraub	PEF	<u>SAW-17</u>	Coal & Energy Price Report dated September 26, 2006.
Sasha A. J. Weintraub	PEF	<u>SAW-18</u>	Composite Exhibit of Maps showing the domestic coal burning units and the types of coal they burned from 1996 to 2005.
James N. Heller	PEF	<u>JNH-1</u>	Description of CQIM model.
James N. Heller	PEF	<u>JNH-2</u>	Graph depicting PRB coal prices.
James N. Heller	PEF	<u>JNH-3</u>	Graph depicting prices of SO <sub>2</sub> allowances.

<u>Witness</u>	<u>Proffered By</u>	<u>I.D. No.</u>	<u>Description</u>
James N. Heller	PEF	<u>JNH-4</u>	PEF document entitled "Estimated Powder River Basis Origin Market".
James N. Heller	PEF	<u>JNH-5</u>	Added capital and operating cost for PRB use at CR4 and CR5.
James N. Heller	PEF	<u>JNH-6</u>	Summary of PRB delivered and evaluated prices.
James N. Heller	PEF	<u>JNH-7</u>	Economic analysis of PRB substitution impacts.
James N. Heller	PEF	<u>JNH-8</u>	Chart of higher costs to customers had PEF burned PRB blend suggested by OPC at CR4 and CR, together with SO <sub>2</sub> allowance and de-rate valuations prepared by Dean and Crisp.
James N. Heller (Rebuttal)	PEF	<u>JNH-9</u>	FERC Form 423 Platts/RDI COALdat Data on coal receipts by various utilities.
John W. Dean	PEF	<u>JWD-1</u>	Composite exhibit of two graphs depicting the prices for SO <sub>2</sub> allowances for the years 1993-2005.
John W. Dean	PEF	<u>JWD-2</u>	Mr. Sansom's response to Interrogatory Number 18, showing the steps of his SO <sub>2</sub> damages calculations.
John W. Dean	PEF	<u>JWD-3</u>	Composite exhibit of excerpts from the Chapter of the AP-42 Manual upon which Mr. Sansom relies.
John W. Dean	PEF	<u>JWD-4</u>	Chart showing the corrected mathematical calculations of Mr. Sansom's alleged SO <sub>2</sub> allowance damages.

<u>Witness</u>	<u>Proffered By</u>	<u>I.D. No.</u>	<u>Description</u>
John W. Dean	PEF	<u>JWD-5</u>	Composite exhibit of portions of the background document to the AP-42 Manual.
John W. Dean	PEF	<u>JWD-6</u>	Introduction to the AP-42, Volume I, Fifth Edition.
John W. Dean	PEF	<u>JWD-7</u>	Composite exhibit of portions of the related Emission Inventory Improvement Program ("EPIP") document to the AP-42 Manual.
John W. Dean	PEF	<u>JWD-8</u>	Chart showing the calculation of SO <sub>2</sub> allowance damages without the ash savings.
John W. Dean	PEF	<u>JWD-9</u>	Chart showing the calculation of SO <sub>2</sub> allowance damages with the adjusted PRB tonnage amounts for 2000, 2001 and 2005.
John W. Dean	PEF	<u>JWD-10</u>	Chart showing the calculation of SO <sub>2</sub> allowance damages taking into account all adjustments.
Lori J. Cross	PEF	<u>LJC-1</u>	A re-calculation of the interest that was originally calculated by Patricia Merchant in her (Revised) Direct Testimony filed on November 1, 2006.
Rod Hatt	PEF	<u>RH-1</u>	Composite exhibit of two aerial photographs of the Crystal River Energy Complex.
Rod Hatt	PEF	<u>RH-2</u>	Material Data Sheet regarding PRB sub-bituminous coal.
Rod Hatt	PEF	<u>RH-3</u>	Composite exhibit of a paper on PRB Coal Degradation – Causes and Concerns and a picture of dusty PRB coal.

<u>Witness</u>	<u>Proffered By</u>	<u>I.D. No.</u>	<u>Description</u>
Rod Hatt	PEF	<u>RH-4</u>	Chart reflecting the number of fires and explosions at power plants.
Rod Hatt	PEF	<u>RH-5</u>	Comparison of the basic coal qualities of bituminous and PRB sub-bituminous coals.
Rod Hatt	PEF	<u>RH-6</u>	Composite exhibit of examples of various PRB mine fires.
Rod Hatt	PEF	<u>RH-7</u>	April 2006 article regarding PRB rail derailments.
Rod Hatt	PEF	<u>RH-8</u>	Summary detailing the capital costs and ongoing operation and maintenance costs necessary to upgrade the Crystal River site to accommodate a PRB coal blend.
Rod Hatt	PEF	<u>RH-9</u>	Composite exhibit of examples of various fires caused by PRB coal dust.
Rod Hatt	PEF	<u>RH-10</u>	Description of fire protection guidelines for handling and storing PRB coal that were developed by the PRB Coal Users' Group.
Rod Hatt	PEF	<u>RH-11</u>	Picture of a roller along a conveyor belt at Crystal River.
Rod Hatt	PEF	<u>RH-12</u>	Power Point presentation regarding the May 2002 conveyor belt fire at the Nanticoke Generating Station.
Rod Hatt	PEF	<u>RH-13</u>	Composite exhibit of pictures taken along the conveyor belts at Crystal River.



<u>Witness</u>	<u>Proffered By</u>	<u>I.D. No.</u>	<u>Description</u>
Rod Hatt	PEF	<u>RH-14</u>	Composite exhibit of pictures of the belts leading to the tripper floor.
Rod Hatt	PEF	<u>RH-15</u>	Composite exhibit of a presentation regarding stacker reclaimer fires at the Nanticoke Generating Station and examples of other PRB coal yard fires.
Rod Hatt	PEF	<u>RH-16</u>	Picture taken of the bituminous coal piles at Crystal River.
Rod Hatt	PEF	<u>RH-17</u>	Picture of a stacker reclaimer at Crystal River.
Rod Hatt	PEF	<u>RH-18</u>	Composite exhibit of various diagrams of the coal yard conveyor belt system at Crystal River.
Rod Hatt	PEF	<u>RH-19</u>	Composite exhibit of pictures of the north coal yard at Crystal River.
Rod Hatt	PEF	<u>RH-20</u>	Picture of a conveyor belt at Crystal River.
Rod Hatt	PEF	<u>RH-21</u>	Composite exhibit of a picture of the square tripper dust collector at Crystal River.
Rod Hatt	PEF	<u>RH-22</u>	Composite exhibit of a CD containing a video of an explosion that occurred in a square dust collector at a power plant and pictures showing that explosion.
Rod Hatt	PEF	<u>RH-23</u>	Composite exhibit of pictures of the damage caused by the J. P. Pulliam tripper floor PRB coal explosion.

<u>Witness</u>	<u>Proffered By</u>	<u>I.D. No.</u>	<u>Description</u>
Rod Hatt	PEF	<u>RH-24</u>	Composite exhibit of a picture and article regarding the PRB coal explosion at the State Line Power Plant.
Rod Hatt	PEF	<u>RH-25</u>	Composite exhibit of examples of PRB coal fires occurring in silos.
Rod Hatt	PEF	<u>RH-26</u>	Test report from the 2004 test burn conducted at CR4.
Clifford Wayne Toms	PEF	<u>CWT-1</u>	Aerial map of the Crystal River Energy Complex.
Clifford Wayne Toms	PEF	<u>CWT-2</u>	Original Babcock & Wilcox boiler design documents for CR4 and CR5.
J. Michael Kennedy	PEF	<u>JMK-1</u>	Copy of the Conditions of Certification for CR4 and CR5.
J. Michael Kennedy	PEF	<u>JMK-2</u>	Copy of the Conditions to Approval.
J. Michael Kennedy	PEF	<u>JMK-3</u>	Opinion letter regarding the enforceability of the long-term Massey contract and the transmittal letter to the DEP.
J. Michael Kennedy	PEF	<u>JMK-4</u>	Initial stack test performed at CR4 using bituminous coal.
J. Michael Kennedy	PEF	<u>JMK-5</u>	Proof of publication of the public notice of intent to issue Title V air operation permit.
J. Michael Kennedy	PEF	<u>JMK-6</u>	Final Determination regarding PEF's Title V permit modification request, including proof of publication of the public notice of intent regarding the same.

<u>Witness</u>	<u>Proffered By</u>	<u>I.D. No.</u>	<u>Description</u>
J. Michael Kennedy	PEF	<u>JMK-7</u>	PEF's application for an air construction permit for a short-term trial burn of a sub-bituminous/bituminous mixture.
J. Michael Kennedy	PEF	<u>JMK-8</u>	Notice of Final Permit for the short-term test burn of PRB coal blend at CR4 and CR5.
Jon Franke	PEF	<u>JF-1</u>	Aerial photograph of the Crystal River site.
Jon Franke	PEF	<u>JF-2</u>	Composite exhibit of pictures of the barge unloader, which were taken from various places at CR3.
Jon Franke	PEF	<u>JF-3</u>	Composite exhibit of pictures of various points along the conveyor belt that would transport PRB coal, which were taken from CR3.
Jon Franke	PEF	<u>JF-4</u>	Picture taken of CR3 from the tripper floor at CR4.
Jon Franke	PEF	<u>JF-5</u>	Picture taken of CR3 from a conveyor belt that would transport the PRB coal.
Jon Franke	PEF	<u>JF-6</u>	Diagram of the transmission lines that provide power to the CR3 nuclear unit.
Jon Franke	PEF	<u>JF-7</u>	Composite exhibit of pictures of transmission lines at Crystal River as they cross over the conveyor belts.
Jon Franke	PEF	<u>JF-8</u>	Analysis of the steps taken to evaluate a proposed change at a nuclear facility.

<u>Witness</u>	<u>Proffered By</u>	<u>I.D. No.</u>	<u>Description</u>
Jon Franke	PEF	<u>JF-9</u>	List of the risks that would require analysis pursuant to the CR3 operating license before significant quantities of PRB coal could be brought onto the Crystal River site.
John Ben Crisp	PEF	<u>JBC-1</u>	Babcock & Wilcox Company design documents for the boilers for CR4 and CR5.
John Ben Crisp	PEF	<u>JBC-2</u>	The Company's 1995 TYSP.
John Ben Crisp	PEF	<u>JBC-3</u>	Composite exhibit of Schedule I, Existing Generation Facilities, to the Company's TYSP's for the years 1996 to 2005.
John Ben Crisp	PEF	<u>JBC-4</u>	PEF's daily total load forecast with the generation.
John Ben Crisp	PEF	<u>JBC-5</u>	Cost estimate for the two-year "bridge" contract costs and remaining eight-year system costs following the construction of a peaking unit to replace the lost 124MW from the CR4 and CR5 de-rates over the ten-year period of time.
John Ben Crisp	PEF	<u>JBC-6</u>	Summary of my calculation of the range of costs the Company would have incurred to replace 124MW of base load capacity over the time frame from 1996 to 2005.
Stephen A. Stewart	AARP	<u>SAS-1</u>	Detail of Stephen Stewart's qualifications and regulatory experience.

<u>Witness</u>	<u>Proffered By</u>	<u>I.D. No.</u>	<u>Description</u>
Stephen A. Stewart	AARP	<u>SAS-2</u>	Operating Instruction for CR4.
Stephen A. Stewart	AARP	<u>SAS-3</u>	Electric Fuels' Responses to EPA.
Stephen A. Stewart	AARP	<u>SAS-4</u>	FERC Form detailing PRB coal shipments to Southeast Plants.
Stephen A. Stewart	AARP	<u>SAS-5</u>	Order No. 23573, in Docket No. 891345.
Stephen A. Stewart	AARP	<u>SAS-6</u>	Gulf Power Rate Case Florida Supreme Court Opinion.
Bernard M. Windham	STAFF	<u>BW-2</u>	Foreign Compliance Coal Purchased in Tons.
Bernard M. Windham	STAFF	<u>BW-3</u>	Summary of Federal Energy Regulatory Commission (FERC) 423 Delivered Price Information.
Bernard M. Windham	STAFF	<u>BW-4</u>	Comparison of Delivered Cost of Colorado Bituminous Coal to Delivered Price of Central Appalachian (CAPP) Coal for PEF.
Bernard M. Windham	STAFF	<u>BW-5</u>	FERC 423 Form Definitions, Codes, and Sources.
Bernard M. Windham	STAFF	<u>BW-6</u>	Breakout of Coal Purchased for Crystal River 4 and Crystal River 5 by Contract Type.
Bernard M. Windham	STAFF	<u>BW-7</u>	PSC 423 Forms for Gulf Power Company (December 1999 and March 2004).
Bernard M. Windham	STAFF	<u>BW-8</u>	Columbia to Gulf Coal Freight Rates, US Army Corps of Engineers.

<u>Witness</u>	<u>Proffered By</u>	<u>I.D. No.</u>	<u>Description</u>
Bernard M. Windham	STAFF	<u>BW-9</u>	<b>REVISED.</b> Excerpted Coal Delivered Price Information from FERC 423 Data Base.
Bernard M. Windham	STAFF	<u>BW-10</u>	PEF's Response to Staff's Sixth Set of Interrogatories, Number 91, Docket No. 040001-EI
Bernard M. Windham	STAFF	<u>BW-11</u>	PEF's Response to Staff's First Set of Interrogatories Number 1, Docket No. 060001-EI.
<u>Rebuttal</u>			
Robert S. Sansom	OPC	<u>RS-30</u>	PRB Analysis Regulated Coal by PFC's Dennis Edwards which is an October Estimate of 1996 EFC Affiliate Profits.
Robert S. Sansom	OPC	<u>RS-31</u>	An Affiliates Profit Table.
Robert S. Sansom	OPC	<u>RS-32</u>	Back calculated FOB Mine Prices from Exhibit DMD-13, P. 1.
Robert S. Sansom	OPC	<u>RS-33</u>	Davis/Heller Rates v. Market Rates.
Robert S. Sansom	OPC	<u>RS-34</u>	Transportation Miles.
Robert S. Sansom	OPC	<u>RS-35</u>	Bids by western railroads to ship PRB coal to Mobile and river docks.
Robert S. Sansom	OPC	<u>RS-36</u>	October 15, 1998 Kennecott letter offering PRB coal to PFC.
Robert S. Sansom	OPC	<u>RS-37</u>	41 Plants east of Mississippi River using PRB Coal in 1996.

<u>Witness</u>	<u>Proffered By</u>	<u>I.D. No.</u>	<u>Description</u>
Robert S. Sansom	OPC	<u>RS-38</u>	TECO data on PRB prices.
Robert S. Sansom	OPC	<u>RS-39</u>	September 14, 2004 e-mail from Mr. Pitcher Spot Barge Purchases declaring Massey coal is more economical if moved by direct rail to Crystal River.
Robert S. Sansom	OPC	<u>RS-40</u>	Sansom photographs from February 22, 2007 visit to Crystal River plant.
Robert S. Sansom	OPC	<u>RS-41</u>	Crystal River coal yard layout.
Robert S. Sansom	OPC	<u>RS-42</u>	PE's notes on a 2005 conversation with Mr. Hatt.
Robert S. Sansom	OPC	<u>RS-43</u>	2004 PRB Bid quantities to PFC for 2005-2007 coal.
Robert S. Sansom	OPC	<u>RS-44</u>	PRB SO <sub>2</sub> Emissions vs. CAPP SO <sub>2</sub> Emissions.
Robert S. Sansom	OPC	<u>RS-45</u>	Revised SO <sub>2</sub> Overpayments of Ratepayers by Sansom.
Robert S. Sansom	OPC	<u>RS-46</u>	Proposed Agenda, March 2005, PFC Synfuels Meeting with Davis and Weintraub participating.
Robert S. Sansom	OPC	<u>RS-47</u>	Mr. Pitcher's 2001 Black Hawk Synfuels offer to Mr. Edwards.
Robert S. Sansom	OPC	<u>RS-48</u>	Undated PFC Marketing and Trading "Indication of Product Availability".
Joseph Barsin	OPC	<u>JAB-1</u>	Resume

<u>Witness</u>	<u>Proffered By</u>	<u>I.D. No.</u>	<u>Description</u>
Joseph Barsin	OPC	<u>JAB-2</u>	RFP - March 10, 1977
Joseph Barsin	OPC	<u>JAB-3</u>	B&V Proposal - April 15, 1977.
Joseph Barsin	OPC	<u>JAB-4</u>	B&V Contract
Joseph Barsin	OPC	<u>JAB-5</u>	Boiler Design Considerations - J. A. Barsin
Joseph Barsin	OPC	<u>JAB-6</u>	Design Blend
Joseph Barsin	OPC	<u>JAB-7</u>	Experience with high sodium sub bituminous coals.
Joseph Barsin	OPC	<u>JAB-8</u>	Experience with high sodium lignites.
Joseph Barsin	OPC	<u>JAB-9</u>	Contract summary.
Joseph Barsin	OPC	<u>JAB-10</u>	Acceptance testing results.
Joseph Barsin	OPC	<u>JAB-11</u>	B&V Coal Handling
Joseph Barsin	OPC	<u>JAB-12</u>	Coal conveying dust abatement.
Joseph Barsin	OPC	<u>JAB-13</u>	PEF RFQ for conveyors.
Joseph Barsin	OPC	<u>JAB-14</u>	SILO unloading.
Joseph Barsin	OPC	<u>JAB-15</u>	PRB 2004 test burn.
Joseph Barsin	OPC	<u>JAB-16</u>	Benefits of PRB.



<u>Witness</u>	<u>Proffered By</u>	<u>I.D. No.</u>	<u>Description</u>
Joseph Barsin	OPC	<u>JAB-17</u>	System design specification.
Joseph Barsin	OPC	<u>JAB-18</u>	Coal handling system analysis.
Joseph Barsin	OPC	<u>JAB-19</u>	Precipitation specs.
Stephen Smallwood	OPC	<u>SS-1</u>	Resume
Stephen Smallwood	OPC	<u>SS-2</u>	Excerpts. PEF's Answer to OPC's Fourth Interrogatories.
Stephen Smallwood	OPC	<u>SS-3</u>	Application for construction permit to conduct test burn.

Parties and Staff reserve the right to identify additional exhibits for the purpose of cross-examination.

X. PROPOSED STIPULATIONS

- 1) The appropriate methodology for calculating the interest related to any overpayment shall be the methodology set forth in the prefiled direct testimony of Progress Energy Florida, Inc.'s witness Lori J. Cross and associated prefiled direct exhibits.

XI. PENDING MOTIONS

- 1) PEF's Motion to Strike or, Alternatively, Motion in Limine to Exclude Testimony of Bernard Windham, filed February 20, 2007.

XII. PENDING CONFIDENTIALITY MATTERS

- 1) PEF's Request for Confidential Classification, filed January 16, 2007.
- 2) PEF's Request for Confidential Classification, filed December 18, 2006.
- 3) PEF's Request for Confidential Classification, filed December 11, 2006.
- 4) PEF's Motion for Temporary Protective Order, filed March 1, 2007.

### XIII. POST-HEARING PROCEDURES

If no bench decision is made, each party shall file a post-hearing statement of issues and positions. A summary of each position, set off with asterisks, shall be included in that statement. The number of words allowed for each position is set forth below in Section XIV of this Prehearing Order. If a party's position has not changed since the issuance of this Prehearing Order, the post-hearing statement may simply restate the prehearing position; however, if the prehearing position is longer than the number of words allotted per position, it must be reduced to the allotted number of words. If a party fails to file a post-hearing statement, that party shall have waived all issues and may be dismissed from the proceeding.

Pursuant to Rule 28-106.215, F.A.C., I hereby authorize that each party's proposed findings of fact and conclusions of law, if any, statement of issues and positions, and brief, shall together total no more than 60 pages and shall be filed at the same time.

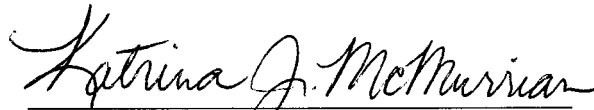
### XIV. RULINGS

- 1) PEF's Request for the Commission to Consider the Testimony of James N. Heller Out of Order at the Final Hearing in this Docket is granted. Mr. Heller's testimony shall be heard on Wednesday, April 4, 2007.
- 2) PEF's Motion for Oral Argument on Motion to Strike, or, Alternatively, Motion in Limine to Exclude Testimony of Bernard Windham, filed February 20, 2007, is granted. Parties were allowed ten minutes each for oral argument at the Prehearing Conference.
- 3) Direct and rebuttal testimony for each witness shall be presented separately, with the exception of PEF's Witness Heller, whose direct and rebuttal testimony shall be taken up at the same time.
- 4) Summaries of witness testimony shall be limited to 5 minutes per witness, with the exception of OPC Witnesses Sansom and Barsin, and PEF Witnesses Heller, Hatt, and Toms, all of whom shall be allowed up to 10 minutes per summary.
- 5) Opening statements by OPC and PEF shall not exceed fifteen minutes each. Opening statements by AARP and White Springs shall not exceed two minutes each. Opening statements by the AG and FIPUG shall not exceed five minutes, and five and a half minutes each, respectively.
- 6) The summaries included in each party's post-hearing statement of issues and positions shall be limited to 100 words for each position and topic, except as modified below:  
Overall Statement of Position to Issue 1 – 150 words;  
“CR-4 & CR-5 Operational Matters” (Topic to Issue 1) – 150 words.

It is therefore,

ORDERED by Commissioner Katrina J. McMurrian, as Prehearing Officer, that this Prehearing Order shall govern the conduct of these proceedings as set forth above unless modified by the Commission.

By ORDER of Commissioner Katrina J. McMurrian, as Prehearing Officer, this 29th day of March, 2007.



KATRINA J. McMURRIAN

Commissioner and Prehearing Officer

(SEAL)

LAH

NOTICE OF FURTHER PROCEEDINGS OR JUDICIAL REVIEW

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

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

Any party adversely affected by this order, which is preliminary, procedural or intermediate in nature, may request: (1) reconsideration within 10 days pursuant to Rule 25-22.0376, Florida Administrative Code; or (2) judicial review by the Florida Supreme Court, in the case of an electric, gas or telephone utility, or the First District Court of Appeal, in the case of a water or wastewater utility. A motion for reconsideration shall be filed with the Director, Office of Commission Clerk, in the form prescribed by Rule 25-22.060, Florida Administrative Code. Judicial review of a preliminary, procedural or intermediate ruling or order is available if review of the final action will not provide an adequate remedy. Such review may be requested from the appropriate court, as described above, pursuant to Rule 9.100, Florida Rules of Appellate Procedure.