BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Nuclear cost recovery clause.	DOCKET NO. 100009-EI ORDER NO. PSC-11-0095-FOF-EI ISSUED: February 2, 2011

The following Commissioners participated in the disposition of this matter:

ART GRAHAM, Chairman
LISA POLAK EDGAR
RONALD A. BRISÉ
EDUARDO BALBIS
JULIE I. BROWN

APPEARANCES:

R. ALEXANDER GLENN, ESQUIRE, JOHN T. BURNETT, ESQUIRE, Progress Energy Service Company, LLC, 299 First Avenue, N. PEF-151, St. Petersburg, FL 33701, JAMES MICHAEL WALLS, ESQUIRE, BLAISE N. HUHTA, ESQUIRE, and MATTHEW R. BERNIER, ESQUIRE, Carlton Fields P.A., Post Office Box 3239, Tampa, Florida 33601-3239
On behalf of Progress Energy Florida, Inc. (PEF)

R. WADE LITCHFIELD, ESQUIRE, BRYAN S. ANDERSON, ESQUIRE, MITCHELL S. ROSS, ESQUIRE and JESSICA A. CANO, ESQUIRE, Florida Power & Light Company, 700 Universe Boulevard, Juno Beach, Florida 33408-0420
On behalf of Florida Power & Light Company (FPL)

JOSEPH A. MCGLOTHLIN, ESQUIRE, and CHARLES J. REHWINKEL, ASSOCIATE PUBLIC COUNSEL, Office of Public Counsel, c/o The Florida Legislature, 111 West Madison Street, Room 812, Tallahassee, Florida 32399-1400
On behalf of Office of Public Counsel (OPC)

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

JON C. MOYLE, JR., ESQUIRE, and VICKI GORDON KAUFMAN, ESQUIRE, Keefe, Anchors, Gordon & Moyle, P.A., 118 North Gadsden Street, Tallahassee, FL 32301, and JOHN W. MCWHIRTER, JR., ESQUIRE, Post Office Box 3350, Tampa, Florida 33601
On behalf of Florida Industrial Power Users Group (FIPUG)

JAMES S. WHITLOCK, ESQUIRE, and GARY A. DAVIS, ESQUIRE, Gary A. Davis & Associates, 61 North Andrews Avenue, Post Office Box 649, Hot Springs, NC 28743, E. LEON JACOBS, JR., ESQUIRE, Williams & Jacobs, LLC, 1720 S. Gadsden Street MS 14, Suite 201, Tallahassee, Florida 32301
On behalf of Southern Alliance for Clean Energy (SACE)

CAPTAIN SHAYLA L. MCNEILL, ESQUIRE, AFCESA, Federal Executive Agencies, c/o AFLSA/JACL-ULT, 139 Barnes Drive, Suite 1, Tyndall Air Force Base, Florida 32403-5319
On behalf of Federal Executive Agencies (FEA)

KEINO YOUNG, ESQUIRE, ANNA R. WILLIAMS, ESQUIRE, and LISA BENNETT, ESQUIRE, Florida Public Service Commission, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850
On behalf of the Florida Public Service Commission (Staff)

MARY ANNE HELTON, DEPUTY GENERAL COUNSEL, Florida Public Service Commission, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850
Advisor to the Florida Public Service Commission

FINAL ORDER DEFERRING FLORIDA POWER & LIGHT COMPANY SPECIFIC ISSUES TO THE 2011 NCRC HEARING, AND ALLOWING RECOVERY SUBJECT TO REFUND, DECLINING TO IMPLEMENT A RISK SHARING MECHANISM, AND APPROVING NUCLEAR COST RECOVERY AMOUNTS FOR PROGRESS ENERGY FLORIDA, INC.

BY THE COMMISSION:

BACKGROUND

On March 1, 2010, Progress Energy Florida, Inc. (PEF) and Florida Power & Light Company (FPL) filed petitions seeking prudence review and final true-up of the 2009 costs for certain nuclear power plant projects pursuant to Rule 25-6.0423, Florida Administrative Code, (F.A.C.) and Section 366.93, Florida Statutes (F.S.). On April 30, 2010, PEF filed a petition seeking approval to recover estimated 2010 costs and projected 2011 costs. On May 3, 2010, FPL filed its petition seeking approval to recover estimated 2010 costs and projected 2011 costs.

Both companies requested recovery of these costs through the Capacity Cost Recovery Clause (CCRC).

PEF's petitions addressed two nuclear projects. The first PEF project is a multi-phased uprate of the existing nuclear generating plant, Crystal River Unit 3 (CR3 Uprate). PEF obtained an affirmative need determination for the CR3 Uprate by Order No. PSC-07-0119-FOF-EI.[1] The second PEF project is the construction of two new nuclear generating plants, Levy Units 1 & 2 (LNP). PEF obtained an affirmative need determination for the LNP by Order No. PSC-08-0518-FOF-EI.[2]

FPL's petition also addressed two nuclear projects. The first FPL project is composed of extended power uprate activities at its existing nuclear generating plants, Turkey Point Units 3 & 4 and St. Lucie Units 1 & 2. FPL obtained an affirmative need determination for its extended power uprate project by Order No. PSC-08-0021-FOF-EI.[3] The second FPL project is the construction of two new nuclear generating plants, Turkey Point Units 6 & 7. FPL obtained an affirmative need determination for the two new nuclear generating plants by Order No. PSC-08-0237-FOF-EI.[4]

Traditionally, all eligible power plant construction projects have been afforded the same regulatory accounting and ratemaking treatment. That is, once the need for a project has been determined, the utility books all expenditures associated with the project into account 107 Construction Work in Progress (CWIP) for that particular project. A monthly allowance-for-funds-used-during-construction (AFUDC) rate is applied to the average balance of this account and the resulting dollar amount is then added to the account balance. This process continues until the completion of the project.

Once the plant is placed in commercial service, the CWIP account balance is transferred to the appropriate plant-in-service account and becomes part of the utility's rate base. The impacts of including the total project costs in a utility's rate base, as well as the impacts of additional plant operational expenses, are addressed during a subsequent proceeding wherein it is determined whether customer base rate charges should be changed in order to provide the opportunity to recover these costs.

In 2006, the Florida Legislature enacted Section 366.93, F.S., creating an alternative cost recovery mechanism in order to encourage utility investment in nuclear electric generation in

---

[1]Order No. PSC-07-0119-FOF-EI, issued February 8, 2007, in Docket No. 060642-EI, In re: Petition for determination of need for expansion of Crystal River 3 nuclear power plant, for exemption from Bid Rule 25-22.082, F.A.C., and for cost recovery through fuel clause, by Progress Energy Florida, Inc.

[2]Order No. PSC-08-0518-FOF-EI, issued August 12, 2008, in Docket No. 080148-EI, In re: Petition for determination of need for Levy Units 1 and 2 nuclear power plants, by Progress Energy Florida, Inc.

[3]Order No. PSC-08-0021-FOF-EI, issued January 7, 2008, in Docket No. 070602-EI, In re: Petition for determination of need for expansion of Turkey Point and St. Lucie nuclear power plants, for exemption from Bid Rule 25-22.082, F.A.C. and for cost recovery through the Commission's Nuclear Power Plant Cost Recovery Rule, Rule 25-6.0423, F.A.C.

[4]Order No. PSC-08-0237-FOF-EI, issued April 11, 2008, in Docket No. 070650-EI, In re: Petition to determine need for Turkey Point Nuclear Units 6 and 7 electrical power plant, by Florida Power & Light Company.

Florida. Section 366.93, F.S., authorized us to allow investor-owned electric utilities to recover certain construction costs in a manner that reduces the overall financial risk associated with building a nuclear power plant. In 2007, Section 366.93, F.S., was amended to include integrated gasification combined cycle plants, and in 2008, the statute was amended to include new, expanded, or relocated transmission lines and facilities necessary for the new power plant. The statute required the adoption of rules that provide for, among other things, annual reviews and cost recovery for nuclear plant construction through the existing capacity cost recovery clause. Rule 25-6.0423, F.A.C., was adopted to implement Section 366.93, F.S.

Pursuant to Rule 25-6.0423(4) and (5), F.A.C., once a utility obtains an affirmative need determination for a power plant covered by Section 366.93, F.S., the affected utility may petition for cost recovery using the alternative mechanism. Three types of prudently incurred costs are described in the rule for such consideration.

- Site selection costs are costs incurred prior to the selection of a site. A site is deemed selected upon the filing for a determination of need. (Rule 25-6.0423(2)(e) and (f), F.A.C.)

- Preconstruction costs are those costs incurred after a site is selected through the date site clearing work is completed. (Rule 25-6.0423(2)(g), F.A.C.)

- Construction costs are costs that are expended to construct the power plant including, but not limited to, the costs of constructing power plant buildings and all associated permanent structures, equipment and systems. (Rule 25-6.0423(2)(i), F.A.C.)

In Order No. PSC-08-0749-FOF-EI, issued October 12, 2008, we approved stipulations among the parties to Docket No. 080009-EI, recommending that site selection costs be treated in the same manner as pre-construction costs. Pursuant to Section 366.93(2)(a), F.S., and Rule 25-6.0423(5), F.A.C., all prudently incurred preconstruction costs, as well as the carrying charges on prudently incurred construction costs are to be recovered directly through the CCRC.

Rule 25-6.0423(5), F.A.C., sets forth the process by which we conducts an annual hearing to determine the recoverable amount that will be included in the CCRC pursuant to Section 366.93, F.S. This is the third year of the nuclear cost recovery roll-over docket (NCRC).

Intervention in the 2010 NCRC proceeding was granted to the following parties: the Office of Public Counsel (OPC), Florida Industrial Power Users Group (FIPUG), White Springs Agricultural Chemicals Inc. d/b/a PCS Phosphate – White Springs (PCS Phosphate), Southern Alliance for Clean Energy (SACE), and the Federal Executive Agencies (FEA). Testimony and associated exhibits were filed by PEF, FPL, OPC, SACE, and our staff.

The evidentiary hearing for the PEF portion of the 2010 NCRC was held on August 24-25, 2010. The FPL portion of the evidentiary hearing was held on August 26-27, 2010 and September 7, 2010. During the FPL portion of the hearing FPL, OPC, and FIPUG filed a joint

motion to defer the resolution of all FPL-specific issues until the 2011 NCRC, except the issue concerning the risk sharing mechanism. On September 7, 2010, we approved the motion.

Subsequently, on October 26, 2010, we approved the one legal issue and all the factual issues pertaining exclusively to PEF. However, we deferred the other legal issue (does the Commission have the authority to require a "risk sharing" mechanism) because the resolution of this issue would impact both FPL and PEF, and the Florida First District Court of Appeal stayed this proceeding as well as all other matters pertaining to FPL. On October 26, 2010, we deferred the resolution of the other legal issue to the 2011 NCRC proceeding due to the pending court case. However, since the court case has been resolved and the stay lifted, we moved forward with a resolution of that issue at our January 11, 2011, Agenda Conference.

All parties, excluding FEA, filed post-hearing briefs on September 10, 2010. We have jurisdiction over these matters pursuant to Section 366.93, F.S., and other provisions of Chapter 366, F.S.

List of Acronyms and Abbreviations	
AFUDC	Allowance for funds used during construction
CCRC	Capacity Cost Recovery Clause
CFR	Code of Federal Regulations
COL	Combined operating license
COLA	Combined operating license application (NRC filings)
Commission	Florida Public Service Commission
CPVRR	Cumulative present value revenue requirement
CR3 Uprate	Multi-phased uprate project at PEF's Crystal River Unit 3
CWIP	Construction work in progress
CO_2	Carbon dioxide
DEP	Department of Environmental Protection
EPC	Engineering, procurement and construction
F.A.C.	Florida Administrative Code
FEA	Federal Executive Agencies
FIPUG	Florida Industrial Power Users Group
FPL	Florida Power & Light Company
F.S.	Florida Statutes
kWh	Kilowatt-hour (1000 watt-hours)
LAR	License amendment request (NRC filings)
LNP	Levy Units 1 & 2 project
LWA	Limited work authorization (NRC filings)
MW	Megawatt (1,000,000 watts)
NCRC	Nuclear Cost Recovery Clause
NRC	Nuclear Regulatory Commission
O&M	operation and maintenance
OPC	Office of Public Counsel
PEF	Progress Energy Florida, Inc.
PCS Phosphate	White Springs Agricultural Chemicals Inc. d/b/a PCS Phosphate – White Springs
RAI	Request for additional information (NRC filings)
ROE	Return on equity
SACE	Southern Alliance for Clean Energy
SMC	Senior Management Committee
Shaw/Westinghouse	A consortium of Shaw-Stone & Webster and Westinghouse that owns and controls the design of the AP1000 nuclear power plant
USACE	United States Army Corps of Engineers

DECISION

I. Deferral of Florida Power & Light Issues[5]

As stated in the above, during the FPL portion of the hearing FPL, OPC, and FIPUG filed a joint motion to defer the resolution of all FPL-specific issues until the 2011 NCRC, except the issue concerning the risk sharing mechanism. (Attachment A) On September 7, 2010, we approved the motion. By approving the motion, FPL is authorized to include $31,288,445 as its total 2011 jurisdictional amount in the calculation of its 2011 Capacity Cost Recovery Factor.

II. Risk Sharing Mechanism[6]

To examine whether we have the authority to require a "risk sharing" mechanism, we believe that it is critical to analyze Section 366.93(2), F.S., and our past decisions. Section 366.93(2), F.S., states in pertinent part:

> Within 6 months after the enactment of this act, the commission shall establish, by rule, alternative cost recovery mechanisms for the recovery of costs incurred in the siting, design, licensing, and construction of a nuclear power plant.... Such mechanisms shall be designed to promote utility investment in nuclear power plants and allow for recovery in rates of all prudently incurred costs.

(Emphasis added)

The statute expressly provides that a utility shall be allowed to recover all prudently incurred costs. The statute is silent regarding a risk sharing mechanism. As discussed below, we find that the only statutory requirement is that the utility prove that its costs in new nuclear power plant capacity were prudently incurred.

Following the directive from the Florida Legislature, we adopted Rule 25-6.0423, F.A.C., which expressly provides for recovery of all prudently incurred costs resulting from the siting, design, licensing, and construction of a nuclear power plant. Rule 25-6.0423, F.A.C., implements the statute by using the exact or similar language from Section 366.93, F.S., and does not provide for a risk sharing mechanism that would preclude a utility from recovering all prudently incurred costs. However, the rule does provide for an annual prudence review of the prior year's costs. Although costs are initially recovered on a projected basis, ultimately, a utility must prove that those costs were prudently incurred to avoid a disallowance of recovery (i.e., refund costs determined to be imprudently incurred). Thus, we find that the only requirement is that the utility must prove its costs were prudently incurred to recover said costs.

The intervenors argue that we have the authority to implement a risk sharing mechanism pursuant to our authority to prescribe fair, just, and reasonable rates. They contend that the statute and the rule allow us to keep costs from escalating to unfair dimensions that would require customers to bear all of the risk when the existing projects face significant uncertainty.

---

[5] Commissioner Argenziano, Edgar, Skop, Graham, and Brisé participated in this portion of the decision.
[6] Commissioner Graham, Edgar, Brisé, Balbis, and Brown participated in this portion of the decision.

Also, the intervenors assert that we have broad authority and discretion to ensure that the purpose and intent of the rule and statute are met in order to protect customers from imprudence. Moreover, they believe that without an implementation of a risk sharing mechanism, the utilities do not have "skin in the game." The intervenors cite several Florida cases as examples to support their position that we have broad authority and discretion to implement a risk sharing mechanism.[7]

We agree with the intervenors that we have broad authority and discretion to set fair, just, and reasonable rates and charges. The cases citied by the intervenors have merit for said proposition. For example, we find that Storey v. Mayo, 217 So. 2d 304 (Fla. 1968), and Richter v. Florida Power Corporation, 366 So. 2d 798 (Fla. 2d DCA 1979), are persuasive of the broad principle it espouse. In Storey v. Mayo, the Court held that "the power of the Commission over privately-owned utilities is omnipotent within the confines of the statutes and the limits of organic law." Id. at 307; In Richter v. Florida Power Corporation, the Court held that

> Chapter 366, Chapter 366, Fla.Stat. (1977) embraces the statutory regulation of public utilities. In § 366.01 the legislature has mandated that the regulation of public utilities "is declared to be in the public interest and this chapter . . . shall be liberally construed for the accomplishment of that purpose."

Id. at 799; OPC Br. 6.

Section 366.93, F.S., however, is unambiguous in its language as it relates to recovery of costs, and it restricts our authority by statute from implementing a risk sharing mechanism that would preclude a utility from recovery of all prudently incurred costs, despite our broad authority to set fair, just, and reasonable rates per Storey v. Mayo. The statute specifically states that the recovery mechanism adopted by the Commission shall be designed to allow a utility to recover all prudently incurred costs. Moreover, it is settled law in Florida that when a general statute and a specific statute cover the same subject area, the specific statute controls. School Board of Palm Beach County v. Survivors Charter Schools, Inc., 3 So. 3d 1220, 1233 (Fla. 2009).[8] Here, our authority pursuant to Section 366.06, F.S., to set fair, just, and reasonable rates does not control cost recovery, because the Florida Legislature enacted Section 366.93, F.S., to specifically govern nuclear cost recovery in Florida. Thus, we find that our authority is limited as it relates to implementing a risk sharing mechanism for recovery of the costs associated with nuclear power plants.

---

[7] Storey v. Mayo, 217 So. 2d 304 (Fla. 1968); Richter v. Florida Power Corporation, 366 So. 2d 798 (Fla. 2d DCA 1979); City Gas Co. v. People Gas System, Inc., 182 So. 2d (Fla. 1965); Southern Bell v. Bevis, 279 So. 2d 285 (Fla. 1973); and Gulf Power Company v. Bevis, 296 So. 2d 482 (Fla. 1974). OPC also cited Order No. PSC-05-0187-PCO-EI, issued February 17, 2005, in Docket No. 041291-EI, In re: Petition for authority to recover prudently incurred storm restoration costs related to 2004 storm season that exceed storm reserve balance, by Florida Power & Light Company.

[8] School Board of Palm Beach County v. Survivors Charter Schools, Inc., were cited in both PEF's and FPL's briefs for the proposition that when a general statute and a specific statute covers the same subject area, the specific statute controls.

However, we find that we do have the authority to address options relating to the timing of recovery and matters associated with rate impacts over the term of the projects, prior to and subsequent to the commercial in service dates of the nuclear power plants. For example, in Order No. PSC-09-0783-FOF-EI, issued November 19, 2009, in Docket No. 090009-EI, In re: Nuclear cost recovery clause, we approved PEF's request to establish a rate management plan whereby costs approved for recovery could be deferred to a later date in order to manage the rate impact for PEF's customers in a given year.[9] This authority is derived from our broad ratemaking powers to set fair, just, and reasonable rates and charges pursuant to Section 366.04, F.S., and does not conflict with the ultimate directive of Section 366.93, F.S., to allow recovery of all prudently incurred costs.

In conclusion, based upon the analysis above, we find that we do not have the authority under the existing statutory framework to require a utility to implement a risk sharing mechanism that would preclude a utility from recovering all prudently incurred costs resulting from the siting, design, licensing, and construction of a nuclear power plant. To do so would limit the scope and effect of a specific statute, and an agency may not modify, limit, or enlarge the authority it derives from the statute. Rinella v. Abifaraj, 908 So. 2d 1126, 1129 (Fla. 1st DCA 2005).

III. Progress Energy Florida, Inc. Specific Issues[10]

PEF - Levy Units 1 & 2

Section 366.93, F.S., provides for advanced cost recovery for utilities engaged in the siting, design, licensing, and construction of nuclear power plants. We have interpreted this statute to include building of new nuclear power plant capacity. Order No. PSC-08-0749-FOF-EI, issued on November 12, 2008, in Docket No. 080009-EI, In re: Nuclear Cost Recovery Clause; and Order No. PSC-09-0783FOF-EI, issued on November 11,2009, in Docket No. 090009-EI, In re: Nuclear Cost Recovery Clause. In analyzing this issue, the main question for us to consider is whether a utility must engage in the siting, design, licensing, and construction of nuclear power plant activities simultaneously in order to meet the statutory requirements under Section 366.93, F.S.

Based upon our analysis of the applicable statute, our prior decisions, and prior Florida case law, we do not find that a utility must engage in the siting, design, licensing, and construction of nuclear power plant activities simultaneously in order to meet the statutory requirements under Section 366.93, F.S. We find that a utility must continue to demonstrate its intent to build the nuclear power plant for which it seeks advance recovery of costs to be in compliance with Section 366.93, F.S. To interpret Section 366.93, F.S., to require a utility to engage in all activities simultaneously in order to qualify for advance cost recovery is an incorrect interpretation of the statute for the reasons discussed below.

---

[9] In 2009, PEF requested a midcourse correction to defer $198 million of nuclear cost included in the Capacity Cost Recovery Clause in order to mitigate rate impact to its customers. The midcourse correction was approved by Order No. PSC-09-0208-PAA, issued April 6, 2009, in Docket No. 090001-EI, In re: Fuel Adjustment Clause.

[10] Commissioner Graham, Edgar, Skop and Brise' participated in this portion of the decision.

First, there are various phases of constructing a nuclear power plant such as siting, design, licensing, and the physical building of the plant. These phases generally cannot occur simultaneously. In fact, Section 366.93(1)(f), F.S., contemplates the various phases of constructing a nuclear power plant, explicitly establishing demarcations of what is preconstruction and what is construction of a nuclear power plant. For example, Section 366.93(1)(f), F.S., defines the word preconstruction as follows:

> Preconstruction is that period of time after a site, including any related electrical transmission lines or facilities, has been selected through and including the date the utility completes site clearing work. Preconstruction costs shall be afforded deferred accounting treatment and shall accrue a carrying charge equal to the utility's allowance for funds during construction (AFUDC) rate until recovered in rates.

Furthermore, Section 366.93(2)(a), F.S., establishes that recovery of any preconstruction cost will occur through the Capacity Cost Recovery Clause. Here, we find that PEF's activities, as it relates to the LNP, qualifies as preconstruction costs as defined by Section 366.93(1)(f), which is recoverable pursuant to the statute. PEF has selected a site, namely the Levy site, and has not yet completed site clearing. Thus, any cost PEF is incurring is preconstruction cost which is recoverable pursuant to Sections 366.93(l)(f) and (2)(a), F.S. Therefore, a rigid reading of Section 366.93, F.S., to require a utility (PEF) to engage in the siting, design, licensing, and construction of nuclear power plant activities simultaneously would be an incorrect interpretation of the statute.

Second, we have previously allowed nuclear cost recovery, since the inception of the NCRC, without requiring siting, design, licensing, and construction of nuclear power plant activities to occur simultaneously. Order No. PSC-08-0749-FOF-EI, issued on November 12, 2008, in Docket No. 080009-EI, In re: Nuclear Cost Recovery Clause; and Order No. PSC-09-0783-FOF-EI, issued on November 11, 2009, in Docket No. 090009-EI, In re: Nuclear Cost Recovery Clause. We allowed FPL to recover costs associated with the licensing activities for Turkey Point Units 6 and 7 after finding those costs reasonable and prudent. As mentioned in PEF's brief, FPL does not have an engineering, procurement, or construction contract for the plants, and does not intend to enter into such a contract until some point in the future. However, we have required that a utility must continue to demonstrate its intent to build the plant for which it seeks advance recovery of costs.

The intervenors contend that PEF's actions do not comport with the purpose of the statute, which is to promote investment in nuclear energy through the siting and ultimate construction of nuclear power plants. They argue that PEF has decided to suspend all work and major capital expenditures on the LNP except that necessary to continue its attempt at obtaining a COL from the Nuclear Regulatory Commission (NRC). They further argue that the utility is not engaging in the siting, design, licensing, and construction of a nuclear power plant. Also, the intervenors assert that no PEF witness could testify that the LNP project would be built, thus, there is uncertainty whether the nuclear plants would be constructed. Moreover, the intervenors contend that:

> today, the project is on hold for at least 5 years and any safety related construction cannot be undertaken until at least three steps occur: (1) the NRC must issue [sic] the COL; (2) The PGN Board must vote to authorize management to give notice to the EPC contractor to restart the work, and (3) the notice must then be given to the contractor. PEF has testified that this process will not likely take place until 2013 at the earliest, if at all.

We acknowledge the intervenors' concerns that a lengthy delay of this magnitude until actual construction may begin to signal a termination of the project. We also recognize the potential pitfalls that might result due to a delay of this magnitude. However, we find that PEF continues to demonstrate its intent to build the plant. PEF amended its engineering, procurement and construction (EPC) contract to build the Levy plants. The amendment still secures PEF's place in line to build the Levy power plant. The amendment secures access to PEF's long-lead items needed to build the Levy nuclear power plant. PEF's witnesses testified that the utility will continue its wetland activities work with the Florida Department of Environmental Protection (DEP) and the United States Army Corps of Engineers (USACE). The witnesses also testified that the Utility will manage, supervise, and support long lead material vendor work, continue AP 1000 design support and work, and engage in shared construction program work such as module design and construction initiatives with Westinghouse and Shaw-Stone & Webster (Shaw/Westinghouse).[11] Therefore, we find that PEF continues to demonstrate its intent to build the Levy power plant.

Third, we find that the intervenors' interpretation that Section 399.93, F.S., requires all siting, designing, licensing, and construction of nuclear power plants to occur simultaneously in order to recover the cost through the NCRC is a constricted interpretation of the statute that does not achieve the general purpose for which the statute was enacted. The Florida Legislature enacted Section 399.93, F.S., to encourage utility investment in nuclear power plants in the state of Florida. The Legislature, in Section 366.93(2), F.S., directed us "within six months after the enactment of said statute, to establish alternative cost recovery mechanisms for costs incurred in the siting, design, licensing, and construction of new or expanded nuclear power plants." The Legislature required that said mechanisms "shall be designed to promote utility investment in nuclear power plants and allow for the recovery in rates of all prudently incurred costs, and shall include, but are not limited to: (a) recovery through the capacity cost recovery clause of any preconstruction costs." Section 366.93(2), F.S. To limit recoverable cost to only those costs associated with the simultaneous activities of siting, licensing, designing, and construction of nuclear power plant, would appear to be a determent to nuclear construction. The process of licensing before the NRC is lengthy and we note it may at times be imprudent to invest in construction activities too early in the NRC process. Thus, we find that the intervenors' interpretation that siting, designing, licensing, and construction activities must occur simultaneously in order to recover prudently incurred costs is an incorrect interpretation.

The intervenors argue that the use of the word "and" means that the statutory interpretation should be conjunctive, thus requiring all phases simultaneously in order to seek

---

[11] Shaw-Stone & Webster and Westinghouse own and control the design of the AP1000 nuclear power plant.

advance cost recovery. The guide for statutory construction is legislative intent, which must be determined primarily from the language of the statute M.D. v. State, 993 So. 2d 1061 (Fla. 1st DCA); Hale v. State, 891 So. 2d 517, 521 (Fla. 2004). Generally, when a statute is clear and unambiguous, courts will not look behind the statute's plain language for legislative intent, or resort to rules of statutory construction to ascertain intent insofar as this would constitute an abrogation of legislative power M.D. v. State, 993 So. 2d 1061 (Fla. 1st DCA); Cherry v. State, 959 So. 2d 702, 713 (Fla. 2007). However, courts follow the general rule that the legislature does not intend to enact useless legislation. M.D. v. State, at 1063; Unruh v. State, 669 So. 2d 242, 245 (Fla. 1996). Therefore, courts should avoid interpretations that would render part of a statute meaningless Id. Another basic rule of statutory construction is that a literal interpretation of the language of a statute need not be given when to do so would lead to unreasonable conclusions or defeat legislative intent Winemiller v. Feddish, 568 So. 2d 483, 484-85 (Fla. 4th DCA 1990); Holly v. Auld, 450 So. 2d 217 (Fla. 1984).

Several Florida courts have read the conjunctive word "and" to mean the disjunctive word "or" when the construction of the term "and" as "either this or that" promotes the legislative intent in enacting a statute Winemiller v. Feddish, 568 So. 2d 483, 484-85 (Fla. 4th DCA 1990). Here, we find that the proper interpretation of the conjunctive word "and" in Section 366.93, F.S., should be the disjunctive word "or," which more closely adheres to the legislative intent. The legislation specifically addresses preconstruction and the type of preconstruction cost that is recoverable under the statute. Section 366.93(2)(a), F.S.

In addition the disjunctive "or" was used by the Florida Legislature when it amended Section 403.519, F.S. (the determination of need statute), at the same time it enacted Section 366.93 to include similar language. Section 403.519(4)(e), F.S., provides that "the right of a utility to recover any costs incurred prior to commercial operation," including "costs associated with the siting, design, licensing, or construction of the plant," shall not be challenged unless the Commission finds after an evidentiary hearing that certain costs were not prudently incurred. Section 403.519(4)(e), F.S. We agree with the Utility that the Florida Legislature intended this same language in Section 366.93, F.S., to be read broadly to include cost recovery for prudently incurred costs for any of the identified activities whether or not other identified nuclear power plant activities were taking place at the same time. With construction, particularly new construction, utilities incur costs to design the power plant, obtain necessary licenses to build the plant, and acquire the site upon which the plant would be built, before any physical construction activities begin. Thus, we find that this Commission shall interpret the "and" in Section 366.93, F.S. as a disjunctive "or" in order to carry out the legislative intent of the statute.

For the reasons stated above, we find that PEF's activities 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.

PEF's 2009 Accounting and Cost Oversight

This issue addresses the accounting and cost oversight controls employed by PEF during 2009 for LNP and the CR3 Uprate projects.

PEF witness Hardison provided an overview of applicable accounting oversight and cost control programs, standards, policies, and procedures employed by PEF for the LNP during 2009. PEF witness Garrett provided similar information concerning the CR3 Uprate and LNP.

Witnesses Hardison and Garrett both stated that PEF incorporated internal and external audit reviews as part of the company's accounting oversight and cost control program to ensure that actual project costs are reasonable and incurred in a prudent manner. Witness Garrett testified that "[t]he project accounting and cost oversight controls that ensure the proper accounting treatment for LNP and CR3 Uprate project costs have not changed from 2008. These controls were found to be reasonable and prudent in Docket 090009-EI." Witness Hardison, identified approximately 47 new or revised corporate procedures that were introduced during 2009 that apply to the LNP. According to witness Hardison, the general purpose of these changes were to enhance quality assurance and self assessment in the contract management, procurement and account systems as they relate to PEF's nuclear plant development.

PEF witness Doughty, an independent management consultant, provided testimony regarding his overall assessment of the LNP management. Within this assessment, witness Doughty reviewed certain processes that staff considers to be accounting oversight and cost control activities. Witness Doughty did not identify any concerns with the project management controls he reviewed and stated that PEF's activities and decisions regarding the LNP management were reasonable and prudent given the size and complexity of the Levy project.

We note that the intervening parties, primary concern with this issue focused on activities associated with the license development work for the CR3 Uprate project. No similar concerns were identified for the remaining siting, design, planning or construction work that took place during 2009 for the LNP and CR3 Uprate projects.

OPC's witness Jacobs, under cross-examination, stated that he did not offer and had no opinion concerning accounting oversight and cost control programs for the LNP and CR3 Uprate projects. However, in its brief OPC suggested that there are indications of inadequate management and contracting oversight controls. Given this, OPC argues that we should "open a separate docket or direct that a specific issue be included in this cost recovery docket addressing the reasonableness of the costs and the prudency of the company's approach to the overall budgeting and adherence to the budget for the EPU project." OPC's other arguments are focused on activities associated with the CR3 Uprate project license amendment request (LAR) development.

FIPUG also took the position that there are indications of inadequate management such as, "work performed by AVERA that would not have been needed had the project been properly managed." Similar to OPC, FIPUG focused its arguments on activities associated with the LAR. In support of its position FIPUG opines, "[h]ad PEF appropriately staffed and supervised the LAR process, it would not have experienced the delay that it did or the additional AREVA costs to prepare the revised LAR." FIPUG did not offer a witness addressing its concerns and it did not identify what additional AREVA costs were incurred.

Commission staff witnesses Coston and Carpenter reviewed many of the accounting and cost oversight controls employed by PEF for the LNP and CR3 Uprate projects. Witnesses Coston and Carpenter released a report of their audit review and findings in July 2010. This report was attached to their testimony and filed in the docket on July 20, 2010. As stated in their testimony, "the primary objective of this review was to document project key developments, along with the organization, management, internal controls, and oversight that PEF has in place or plans to employ for these projects."

When addressing the reasonableness of a utility's accounting and cost oversight controls, we look to confirm that systems and processes are in place which are consistent with general accounting requirements and standards. In addition, our analysis of budgeting and cost reporting/control systems looks to confirm that budgeting and cost information are developed accurately and timely, and that the information is reported in such a way as to be helpful to project mangers and senior management.

Based on our review of the report filed by witnesses Coston and Carpenter, we find that the findings identified in their report are more directly associated with project management controls, or concern management actions whose impacts on project costs may not be known until some time in the future. Similarly, the heart of the concerns identified by OPC and FIPUG are related to management control processes, rather than accounting and cost controls. We agree with the position offered by PEF in which it asserts, "OPC states that for the CR3 Uprate there are indications of inadequate management and contracting oversight controls. However, no evidence was introduced at the hearing regarding this statement and what OPC clearly meant by its position at the hearing was that OPC was concerned with certain CR3 Uprate costs not the accounting and cost oversight controls." We note that the review and our finding in the next issue below will address project management, contracting, and oversight control concerns as raised by the parties relating to the CR3 Uprate project.

We were not persuaded by OPC's arguments supporting its recommendation that the "Commission should open a separate docket or direct that a specific issue be included in this cost recovery docket addressing the reasonableness of the costs and the prudency of the company's approach to the overall budgeting and adherence to the budget for the EPU project." We find that a review of the record shows neither OPC nor other parties identified any specific concerns with PEF's accounting/budgeting systems and processes for either project. No concerns were identified that PEF's cost control documents or reports did not accurately present or report approved budgets for any activity being controlled. In addition, no concerns were identified that budget variances for any particular activity, either due to actual costs incurred or changes in project scope, were not included in budget control reports or not reported in a timely manner. Finally, no concerns were raised as to the booking of actual costs or the reporting of them in a timely manner. In our view, OPC's arguments centered on changes in estimated total project costs. We note that no party identified any project scope or cost changes that were unneeded or shown to be unreasonable. Therefore, we do not find that a separate docket needs to be opened or that inclusion of a specific issue to address this concern is necessary. However, we believe that concerns regarding changes in estimated total project costs are best addressed in the project feasibility analysis issue where changes can be reviewed on an annual basis.

In light of our analysis and a preponderance of the evidence in the record, we find that PEF has demonstrated that the accounting and costs oversight controls employed during 2009 for the LNP and the CR3 Uprate projects were reasonable and prudent.

PEF's 2009 Project Management, Contracting, and Oversight Controls

This issue addresses project management, contracting, and oversight controls employed by PEF during 2009 for the LNP and CR3 Uprate projects. No concerns were identified by the parties concerning the LNP; however, concerns were identified for the CR3 Uprate project. In general, the concerns raised by the parties involved certain activities associated with PEF's management control over the LAR development process. We note that once a nuclear plant is licensed by the NRC, any proposed modification to the plant that may change the original safety analysis (such as an uprate) must be submitted to the NRC for review and approval. This process is called a License Amendment Request, or LAR.

PEF witnesses Hardison, Franke, and Karp provided overviews of the applicable project management, contracting, and oversight controls employed by PEF during 2009 for the LNP and CR3 Uprate projects. PEF witness Elnitsky described and provided support concerning management processes and decisions pertaining to contractual matters for the Levy project during the 2009 time period. Witness Franke described and provided support concerning management processes and decisions relative to contractual matters for the CR3 Uprate project during 2009.

As discussed in witness Franke's testimony:

> . . . [PEF] utilizes several policies and procedures to ensure that costs for the CR3 Uprate project are reasonably and prudently incurred. First, the CR3 Uprate is managed in accordance with the Company's Project Management Manual, which is used to manage all capital projects, together with the Company's policies and procedures for Major Capital Projects – Integrated Project Plan (IPP). The IPP is being updated to account for changes in the work plan since the last update including the shift in the R17 outage schedule and the deferral of the LPTs.
>
> We believe that our project management and cost oversight policies and procedures are consistent with best practices for capital project management in the industry and are reasonable and prudent. PEF has employed these project management policies and procedures to successfully implement two phases of the CR3 Uprate project, during two separate plant outages, and completed the work scope necessary for the first two phases of the CR3 Uprate project.

Witness Hardison and Karp provided similar project management information for the LNP, with witness Hardison opining that:

> The policies and procedures have been tested by the Company on other capital projects. Any lessons learned from those projects have been incorporated in the current policies and procedures. We believe, therefore, that our project

management policies and procedures are consistent with best practices for capital project management in the industry.

PEF witnesses Doughty and Galloway reviewed project management, contracting, oversight controls and management decision-making processes as part of their overall project management assessment of the LNP. These two consultants opined that the project management controls and decision-making processes were reasonable and prudent given the size and complexity of the Levy project.

As noted above, the main concern raised in this issue involved certain activities associated with the LAR development process for the CR3 Uprate project. Our staff's review of the record identified facts concerning PEF's LAR development process, which were not disputed. PEF contracted with AREVA to develop a LAR application package for the Uprate project. The contract specified that AREVA was to develop the needed information based on a model used in, what was then, a recently approved uprate request for the Ginna nuclear plant. AREVA submitted a draft of its work in mid 2009. PEF submitted the draft application to an expert panel that had been established to review the application. The panel reviewed AREVA's work and found that the scope and level of detail included in the draft application would not be approved by the NRC, due to the fact that "standards" for LAR applications had evolved since the Ginna submittal. The expert panel further found that the work that was performed was incomplete and of poor quality. PEF's internal auditors reviewed the LAR process around this same time and found that PEF had not devoted adequate management resources to the process to ensure receiving a quality work product from AREVA.

Only PEF and audit staff witnesses provided testimony on this particular concern. Staff audit witnesses Coston and Carpenter reviewed many of the project management, contracting, and oversight controls employed by PEF during 2009 for the LNP and the CR3 Uprate projects. They released a report of their review and findings in July 2010. This report was attached to their prefiled testimony, filed in this docket on July 20, 2010. As audit staff testified, "[t]he primary objective of this review was to document project key developments, along with the organization, management, internal controls, and oversight that PEF has in place or plans to employ for these projects."

The staff witnesses' report identified no concerns regarding the project management of the LNP in 2009. However, they identified one concern regarding the CR3 Uprate project management, recommending that "the Commission consider whether the additional costs for the LAR restructuring/rewrite and the additional scope by AREVA resulted from inadequate management oversight." We note that no further unresolved findings are identified in witnesses Coston and Carpenter's 2010 report concerning project management, contracting, and oversight controls for the LNP or other aspects of the CR3 Uprate project.

OPC witness Jacobs, under cross-examination, stated that he did not offer and had no opinion concerning project management, contracting, and oversight controls for the LNP and CR3 Uprate projects. However, in its brief OPC suggested that there are indications of inadequate management and contracting oversight of the CR3 Uprate project, and that PEF has yet to demonstrate that the costs of preparing the LAR were reasonable and prudent. OPC

argues that through PEF's own admissions, it failed to properly oversee and manage both AREVA and its own staff. OPC suggested that we "disallow $6 million representing the rough aggregate of the [redacted] for the company costs to fix the mess." In the alternative, OPC suggested that we should allow the parties to address the disallowance in next year's docket.

FIPUG, in its brief, offered similar arguments to those offered by OPC. FIPUG suggested that there are indications of inadequate management, and that PEF has not demonstrated that the costs related to the revised LAR were reasonable and prudent. FIPUG suggested that had PEF appropriately staffed and supervised the LAR process, it would not have experienced the delay that it did or the additional AREVA costs to prepare the revised LAR. FIPUG did not offer any evidence in support of its assertion.

PEF witness Franke addressed audit staffs' finding in his rebuttal testimony. Overall, witness Franke did not take issue with the general observations contained in Coston and Carpenter's report concerning the CR3 Uprate LAR development and contract activities. However, witness Franke did not agree with their finding. In particular, PEF did not agree that any rewrite work done by AREVA for work that did not meet the standards contained in the original contract has been charged to or will be paid by PEF. In addition, witness Franke stated that no "restructuring" or enhancement work required under Change Orders 23 and 25 (to the original contract) included avoidable work. Witness Franke further stated that the work contracted for under these two change orders was necessary to meet evolving NRC expectations for LAR submittals and was needed regardless of the quality of work that was delivered by AREVA under the original contract.

Witness Franke did not take issue with the conclusion in audit staffs' report, which in part stated that PEF had "inadequate management oversight" concerning the development of the CR3 Uprate LAR during 2009. During cross-examination witness Franke stated, "[w]e were disappointed both in AREVA and our own performance to allow them to deliver something that didn't meet the contract." He stated that the conclusion in audit staffs' report is consistent with findings of the PEF expert panel and findings contained in an internal adverse condition report prepared by PEF's own internal auditors. Regarding the concern that there potentially was "inadequate management oversight" concerning the development of the CR3 Uprate LAR, witness Franke suggested that the LAR problems do not support a finding of imprudence. Witness Franke stated that the problems that were identified by the expert panel and auditors, coupled with the company's response, actually demonstrated prudent project management.

> The subsequent adverse conditions internal audit report regarding the quality of PEF management of vendor work on the draft LAR also reflects prudent project management. Obviously, PEF prefers different conclusions, but PEF understands that independent external and critical internal reviews are necessary to any prudent project management process. Audit Staff agreed PEF's self-assessment process is important and valuable. PEF accepted the criticisms of the draft LAR report and its management, created and implemented an action plan to address them, and corrected them. Further expert panel reviews in November 2009 and January 2010 confirmed that these recommendations were adequately addressed.

> This demonstrates PEF's prudent project management, contracting, and oversight controls. PEF reviewed and re-reviewed the LAR work, corrected any work that was not up to par, and ensured a final, sufficient and adequate work product consistent with standards at the time the LAR must be submitted. This is exactly what is supposed to occur when prudent project management and oversight controls are in place, and this is how those project management and oversight controls are supposed to be implemented to identify and remedy any issues on a timely basis.

In theory, we agree with the view presented by PEF witness Franke in the above paragraphs. A project management process that does not allow for or react timely to a known problem would be a strong indication of a poorly designed project management control. If a company was in this position and did not take remedial action that would be an indication of imprudent management control. However, we find that the concern raised by witnesses Coston and Carpenter is related to timing not results.

Staff audit witnesses Coston and Carpenter question what actions PEF could or should have taken before the expert panel's review. It appears, based on the our staff witnesses' finding, that PEF did not have a process or resources in place to timely redirect work (due to knowable evolving NRC expectations) that was being performed under contract by PEF's contractor AREVA. A delay in redirecting this work may have resulted in work being completed that provided limited value in satisfying the LAR's changing informational/data requirements, and therefore project costs could have been adversely affected.

We acknowledge that the parties had the usual amount of time to investigate PEF's project management, contracting, and oversight controls for the LNP and CR3 Uprate projects. We also note that the concern identified by witnesses Coston and Carpenter is the only item which resulted from an actual investigation of the facts and circumstances surrounding the activity. However, the questions posed by witnesses Coston and Carpenter only became known to the parties late in the hearing preparation process. We believe that a finding of management imprudence, on any issue, should not be made lightly or without complete information.

We find that the record is clear that during 2009 PEF did not marshal adequate resources to manage the LAR development process effectively. However, we do not find that this fact provides us with a clear basis upon which to make a finding concerning management prudence. Questions concerning the LAR development process still remain unanswered, such as whether it was reasonably clear from the inception of the process, or at any time up until the completion of the expert panel's review of the draft LAR application, that additional resources were warranted; or whether PEF engaged in any mitigating strategies, and if so when, to augment the actual level of resources that had been devoted to the development of the LAR. We find that the record is also unclear as to whether ratepayers' costs will or have been negatively affected by PEF's management actions concerning the LAR. Our review of the record found no instance where parties identified work performed by AREVA (under the original contract or either of the two change orders) that was shown to be unneeded. However, testimony and positions of the parties concerning potential cost impacts due to the LAR range from $0 to over $40 million. Given this

divergence of fact and opinion, we decline to make any decision concerning the prudence of PEF's management actions associated with the LAR development for CR3 Uprate at this time.

We find that our decision-making process, and ultimately the ratepayers, will be better served by allowing all parties the opportunity to fully investigate the facts and circumstances surrounding PEF's management of the 2009 LAR development process. A more thorough understanding of the facts and circumstances concerning management actions during 2009 will also afford us with a better record to determine if any imprudent actions occurred, and determine the level of impact these actions had upon costs. We agree with the suggestion offered by OPC that we put the parties on notice that concerns with PEF's management of the LAR development process and determination of management prudence will be identified as an issue in the 2011 Nuclear Cost Recovery proceeding.

Therefore, we find that project management, contracting, and oversight controls employed by PEF during 2009 for the Levy Units 1 & 2 project were reasonable and prudent. We withhold making a finding concerning the prudence of the project management, contracting, and oversight controls employed by PEF during 2009 for the Crystal River Unit 3 Uprate project, especially as it relates to the LAR development process. A determination concerning the prudence of these controls and oversight activities shall be included as an issue in the 2011 Nuclear Cost Recovery proceeding.

PEF - Annual Detailed Analysis of the Long-term Feasibility of Completing the LNP

This issue addresses review and approval of PEF's detailed long-term feasibility analysis of continuing construction and completing the LNP as required by Rule 25-6.0423, F.A.C., and Order No. PSC-08-0518-FOF-EI.

In an effort to mitigate the economic risks associated with the long lead-time and high capital costs associated with nuclear power plants, the Florida Legislature enacted Sections 366.93 and 403.519(4), F.S., during the 2006 legislative session. Section 366.93(2), F.S., requires we establish, by rule, alternative cost recovery mechanisms for the recovery of costs incurred in the siting, design, licensing, and construction of a nuclear power plant. We adopted Rule 25-6.0423, F.A.C., to satisfy the requirements of Section 366.93(2), F.S. Rule 25-6.0423(5)(c)5, F.A.C., states:

> By May 1 of each year, along with the filings required by this paragraph, a utility shall submit for Commission review and approval a detailed analysis of the long term feasibility of completing the power plant.

In Order No. PSC-08-0518-FOF-EI, at page 24, we provided specific guidance regarding the requirements necessary for PEF to satisfy Rule 25-6.0423(5)(c)5, F.A.C. The Order reads as follows:

> ORDERED that Progress Energy Florida, Inc. shall provide a long-term feasibility analysis as part of its annual cost recovery process which, in this case, shall also include updated fuel forecasts, environmental forecasts, non-binding

> capital cost estimates, and information regarding discussions pertaining to joint ownership.

Additionally, at page 21, the Order contains the following language lending insight to our intent regarding the long-term feasibility of PEF's LNP:

> We will review the continued feasibility of Levy Units 1 and 2 during its annual nuclear cost recovery proceedings; thus, providing the appropriate checks and balances to ensure that the construction of the nuclear units continues to be in the best interest of PEF' s ratepayers.

Addressing necessary delays to the project schedule, PEF considered three primary scenarios for analysis in determining its course of action: (1) moving forward as quickly as possible, (2) project cancellation, and (3) continuation with a partial suspension. In evaluating the three choices, PEF considered a number of quantitative and qualitative factors. Among the quantitative factors that the Company examined were project costs and cost-effectiveness using sensitivities addressing updated fuel and environmental price forecasts. Qualitative factors considered included regulatory feasibility, technical feasibility, funding feasibility, and joint ownership.

PEF witness Elnitsky discussed cost comparison of the three options:

> For each of the three options, the Company considered the costs to be incurred over the three year period from 2010 through 2012. PEF chose that time frame because 2012 is the current estimate of when the COL for the LNP is to be issued and it also provides a reasonable assessment of the near term costs of each option.

Due to regulatory determinations beyond PEF's control, primarily delays in the NRC review process, the Unit 1 in-service date was initially assumed to be delayed a minimum of 36 months. We viewed the move-forward-as-quickly-as-possible option, with a 2019 in-service date (ISD) for Unit 1, as a reasonable starting point for comparison with other options.

PEF's examination removed the move-forward-as-quickly-as-possible option from further consideration for five reasons. First, a 36-month schedule shift did not provide "float" time for potential future schedule impacts. Second, PEF believed investment of near-term capital would not materially change the in-service date. In addition, the infusion of near-term capital would drive up customer bills on top of increases imposed by new demand-side management goals. Third, near-term investment of substantial capital before receiving the COL would put the Company at greater risk. Finally, this option would deny additional time for greater certainty about the economy and state and federal environmental policies. When the move-ahead option with a 2019 in-service date (ISD) is compared to PEF's proposed 2021 ISD, the cumulative present value revenue requirement (CPVRR) analysis reflects minimal change. However, the near term (2010-2012) rate impact changed dramatically as shown below:

Estimated Average Customer Monthly Bill Impact

Year	2019 ISD	2021 ISD
2010	$6.78	$6.78
2011	$11.01	$2.17
2012	$20.39	$3.99

Having eliminated the move-forward-as-quickly-as-possible course of action, PEF began studying the remaining two choices: project cancellation and partial suspension of activity until receipt of the COL.

PEF assessed the cancellation option as a less than an optimum choice for both the Company and its customers. Were the LNP to be terminated, the benefits of new nuclear generation would likely be lost for the foreseeable future. The other parties to the EPC contract would move on to other utilities pursuing development of AP1000 units in the United States and around the world. Likewise, the limited resources of the NRC would be committed to review of active nuclear projects. Cancellation of the LNP would deny PEF and its customers the long-term benefits of fuel portfolio diversity, reduced reliance on fossil fuels for energy production, carbon free energy generation, and base load capacity with a relatively low cost fuel source. Witness Lyash summarized, "the long-term benefit is a billion dollars, plus your fuel savings, plus any carbon costs that might accumulate on top of that."

Also arguing against project cancellation was PEF's negotiation of the amendment to the EPC contract. Commission audit staff concluded that the Company was able to negotiate a favorable amendment with limited fee impact, as well as mitigate risk to PEF and its customers. PEF agreed with audit staff's conclusion that PEF was able to obtain a favorable amendment that preserved the contractual benefits of the EPC agreement with limited fee impact to PEF and its customers as well as mitigating risk.

In reviewing PEF's management process and procedures used to reach a decision, audit staff concluded that, "given the uncertainties facing the company, keeping the project progressing without further substantial investment is a reasonable approach at this point in time."

Having decided that the best course of action was to partially suspend activity until the NRC issues the COL, PEF then developed a long-term feasibility analysis based upon this new approach.

PEF - Economic Feasibility of LNP

We believe that the forecasts, cost estimates, and analyses are necessary filing requirements to assess PEF's 2010 LNP feasibility analysis. In addition, we reviewed regulatory and technical aspects of the project. These elements provide a holistic perspective for our decision regarding the approval or denial of PEF's detailed long-term feasibility analysis.

PEF - Project Cost-Effectiveness of LNP

PEF updated the LNP total project cost estimate from the need determination estimate of $17.2 billion to $22.5 billion. Two years ago the total project costs, including AFUDC, were approximately $17.2 billion, but that was for units scheduled for operation in 2016 and 2017. The new total LNP cost, which increased by about $5 billion, including AFUDC, is for nuclear units coming in service in 2021 and 2022. According to PEF witness Lyash, the reason for the increase in the total project cost from the need determination proceeding to this proceeding was the change in the scheduled in-service dates of the units.

PEF witness Elnitsky explained the cost increase as a function of time shift:

> . . . the primary change in total project cost is a result of escalation. The scope of the project has not changed, nor have there been other changes that cause the base cost of the project to go up.
>
> Fundamentally, what has happened is the escalation factors that are part of the base contract around long-lead material and commodities, as you run those out over the schedule shift of the project that is the primary contributor to the cost. So one way to think about it is when you pick up a project of this size and you move it in time, the primary driver of the cost change is escalation factors.

Another example of the cost estimate increase is the material and labor cost exceeding original estimates, a portion of which is also attributable to the change of the in-service date. This is due largely to the effects of cost escalation resulting from the shifts in the in-service dates for the first unit to 2021.

The updated analysis produced results that were more favorable to the LNP, even though the updated analysis assumed a higher project cost and later in-service date than in the need case. In response to a question about the credibility of the total cost increasing while the updated CPVRR results were more favorable, PEF witness Lyash provided the following explanation:

> No, I don't think it's inconsistent that the project moved out in time and escalated in cost and yet still looks similarly attractive. And the reason is because the project did not increase significantly in capital cost in terms of the defined scope. There have not been more feet of pipe, more yards of concrete, less productivity, more equipment priced into it. So the price has not increased in that manner.
>
> It has primarily increased because as you move any project out in time and you apply escalation to it, the type of escalation we typically see in the economy, its price rises, but so does the price of all the alternatives. So does the price of fuel, so do the environmental costs, so its relative position – while it is [*sic*] absolute dollar value may change, its relative position doesn't change.

PEF updated its CPVRR analysis comparing the LNP to comparably-sized natural gas plants under a variety of scenarios and sensitivities. PEF compared the updated analysis to the same analysis performed for the need determination when PEF's projected Return on Equity

(ROE) was at 11.25 percent. At that ROE, PEF's weighted average cost of capital was 8.1 percent. The table below illustrates the comparative CPVRR data presented at the Need Determination:

Summary of CPVRR Results from the Levy Need Determination

Levy Need Study CPVRR Economic Results Summary Table ($2007)

Fuel Sensitivities				CapEx Sensitivities					
Base Capital Reference Case	Low Fuel Reference	Mid Fuel Reference	High Fuel Reference	Mid Fuel Reference Case	LNP CapEx -5%	Mid Fuel Reference	LNP CapEx 5%	LNP CapEx 15%	LNP CapEx 25%
Levy Need - 100% Ownership, 2016 COD Levy Case Versus All Gas CPVRR $Million, ($2007)									
No CO_2	($6,416)	($2,888)	$2,635	No CO_2	($2,365)	($2,888)	($3,400)	($4,434)	($5,469)
EPA WM CO_2	($3,834)	($343)	$5,212	EPA WM CO_2	$109	($343)	($926)	($1,960)	($2,995)
CRA WM CO_2	($2,684)	$793	$6,318	CRA WM CO_2	$1,207	$793	$172	($862)	($1,897)
EPRI Full CO_2	$85	$3,614	$9,077	EPRI Full CO_2	$3,975	$3,614	$2,940	$1,906	$871
EPRI Ltd CO_2	$2,930	$6,380	$11,892	EPRI Ltd CO_2	$5,674	$6,380	$5,640	$4,605	$3,571
Levy Need - 80% Ownership, 2016 COD Levy Case Versus All Gas CPVRR $Million, ($2007)									
No CO_2	($5,566)	($2,725)	$1,732	No CO_2	($2,284)	($2,725)	($3,154)	($4,023)	($4,892)
EPA WM CO_2	($3,530)	($733)	$3,756	EPA WM CO_2	($364)	($733)	($1,234)	($2,103)	($2,972)
CRA WM CO_2	($2,619)	$171	$4,631	CRA WM CO_2	$502	$171	($367)	($1,236)	($2,106)
EPRI Full CO_2	($448)	$2,403	$6,790	EPRI Full CO_2	$2,681	$2,403	$1,812	$942	$73
EPRI Ltd CO_2	$1,799	$4,594	$9,018	EPRI Ltd CO_2	$4,805	$4,594	$3,936	$3,067	$2,197
Levy Need - 50% Ownership, 2016 COD Levy Case Versus All Gas CPVRR $Million, ($2007)									
No CO_2	($4,017)	($2,246)	$523						
EPA WM CO_2	($2,766)	($963)	$1,783						
CRA WM CO_2	($2,250)	($409)	$2,317						
EPRI Full CO_2	($1,018)	$908	$3,685						
EPRI Ltd CO_2	$339	$2,220	$5,139						

In PEF's 2010 rate case, we reset PEF's ROE to 10.50 percent, thereby changing PEF's current weighted average cost of capital to 6.75 percent.[12] The following table displays the CPVRR analysis results at the new rate, which shows the LNP even more cost-effective:

[12] Order No. PSC-10-0398-S-EI, issued June 18, 2010, in Docket 090079-EI, In re: Petition for increase in rates by Progress Energy Florida, Inc.

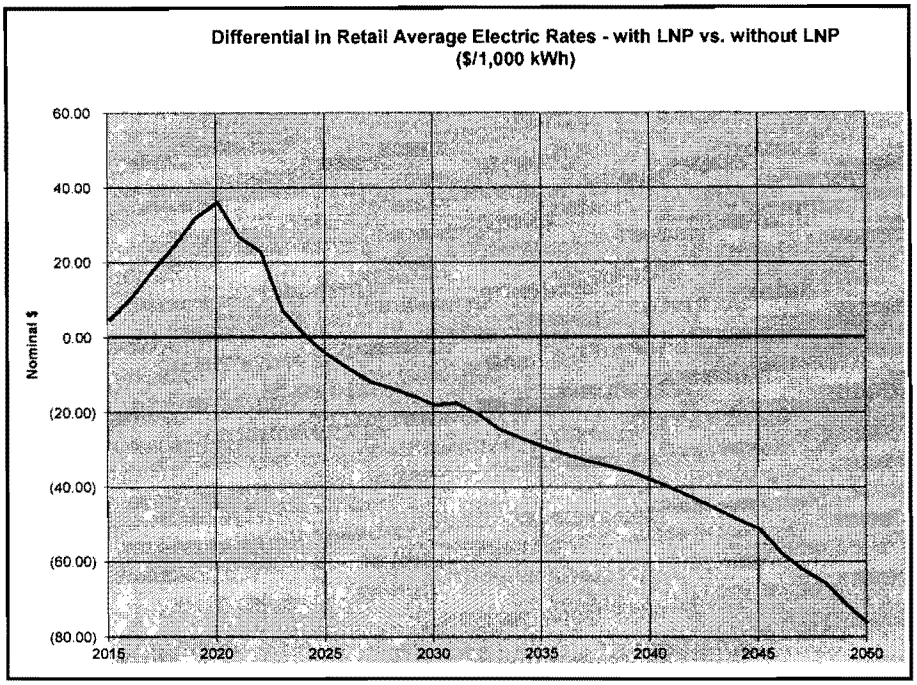
PEF Summary CPVRR Review for 2010 NCRC Filing

April '10 NCRC CPVRR Economic Results Summary Table ($2010)

Fuel Sensitivities						CapEx Sensitivities						
Base Capital Reference Case	Low Fuel Reference	Low BW Fuel Sens	Mid Fuel Reference	High BW Fuel Sens	High Fuel Reference	Mid Fuel Reference Case	LNP CapEx -15%	LNP CapEx -5%	Mid Fuel Reference	LNP CapEx 5%	LNP CapEx 15%	LNP CapEx 25%
NCRC APR '10: 100% Ownership, 2021 COD Levy Case Versus All Gas CPVRR $Million, 6.75% Discount Rate												
No CO_2	($11,170)	($3,545)	$975	$5,069	$19,776	No CO_2	$2,520	$1,490	$975	$460	($570)	($1,600)
EPA WM CO_2	($7,437)	$865	$4,792	$8,908	$23,614	EPA WM CO_2	$6,337	$5,307	$4,792	$4,277	$3,247	$2,218
CRA WM CO_2	($5,145)	$3,309	$7,201	$11,330	$26,001	CRA WM CO_2	$8,746	$7,716	$7,201	$6,686	$5,656	$4,626
EPRI Full CO_2	($2,843)	$5,796	$9,669	$13,817	$28,450	EPRI Full CO_2	$11,214	$10,184	$9,669	$9,154	$8,124	$7,094
EPRI Ltd CO_2	$2,110	$10,935	$14,748	$18,867	$33,531	EPRI Ltd CO_2	$16,293	$15,263	$14,748	$14,234	$13,204	$12,174
NCRC APR '10: 80% Ownership, 2021 COD Levy Case Versus All Gas CPVRR $Million, 6.75% Discount Rate												
No CO_2	($9,166)	($2,878)	$628	$3,906	$15,780	No CO_2	$1,842	$1,033	$628	$224	($586)	($1,395)
EPA WM CO_2	($6,217)	$511	$3,601	$6,884	$18,782	EPA WM CO_2	$48,158	$4,006	$3,601	$3,196	$2,387	$1,578
CRA WM CO_2	($4,407)	$2,393	$5,466	$8,776	$20,647	CRA WM CO_2	$6,680	$5,871	$5,466	$5,062	$4,252	$3,443
EPRI Full CO_2	($2,574)	$4,328	$7,398	$10,735	$22,564	EPRI Full CO_2	$8,612	$7,803	$7,398	$6,993	$6,184	$5,374
EPRI Ltd CO_2	$1,343	$8,339	$11,376	$14,698	$26,484	EPRI Ltd CO_2	$12,590	$11,781	$11,376	$10,972	$10,162	$9,353
NCRC APR '10: 50% Ownership, 2021 COD Levy Case Versus All Gas CPVRR $Million, 6.75% Discount Rate												
No CO_2	($6,496)	($2,461)	($213)	$1,880	$9,494	No CO_2	$557	$44	($213)	($469)	($982)	($1,495)
EPA WM CO_2	($4,801)	($371)	$1,633	$3,738	$11,354	EPA WM CO_2	$2,402	$1,889	$1,633	$1,376	$863	$350
CRA WM CO_2	($3,441)	$813	$2,801	$4,900	$12,510	CRA WM CO_2	$3,571	$3,058	$2,801	$2,544	$2,031	$1,518
EPRI Full CO_2	($2,260)	$2,080	$4,036	$6,160	$13,693	EPRI Full CO_2	$4,805	$4,292	$4,036	$3,799	$3,266	$2,753
EPRI Ltd CO_2	$235	$4,678	$6,605	$8,709	$16,129	EPRI Ltd CO_2	$7,375	$6,862	$6,605	$6,349	$5,836	$5,323

PEF was questioned about more scenarios and sensitivities showing that the natural gas alternative was a more cost-effective course (i.e., had negative numbers) than in the CPVRR analysis done for the need determination. PEF noted that such an argument failed to recognize that the updated CPVRR analysis included more scenarios and sensitivities. On a percentage basis, the updated CPVRR produced results that were more favorable to the LNP, even though the updated CPVRR assumed a higher project cost and later in-service dates for the LNP than the need case. We, however, view this as an incomplete method of analyzing the CPVRR results. Such an analysis does not change the fact that the cost-effectiveness of the LNP project is still driven by the same two primary factors as in the original need determination proceeding: the differential in fuel prices and the cost of carbon regulation. As shown above, only scenarios with the low fuel reference show the LNP to not be cost-effective. We find that the low fuel reference scenario should be discounted because it assumes natural gas prices to remain less than $5.00/MMBtu over the next 30 years. Natural gas prices have historically been volatile and subject to sharp increases in price. While the "No CO_2" scenarios represent the present day status (i.e. no CO_2 regulations), the general consensus is that Congress will enact some form of carbon regulation in the near future. As shown above, any cost of carbon legislation improves the overall cost-effectiveness of the LNP project.

PEF also provided its projection of comparative costs between a resource plan including the LNP and the plan without the LNP. The chart below demonstrates that fuel savings from operation of Levy units 1 and 2 is projected to offset the initial increase in the retail average electric rate within 4 years of the in-service dates. After 2025, savings will continue increasing in comparison to a generation plan from comparably-sized natural gas plants.

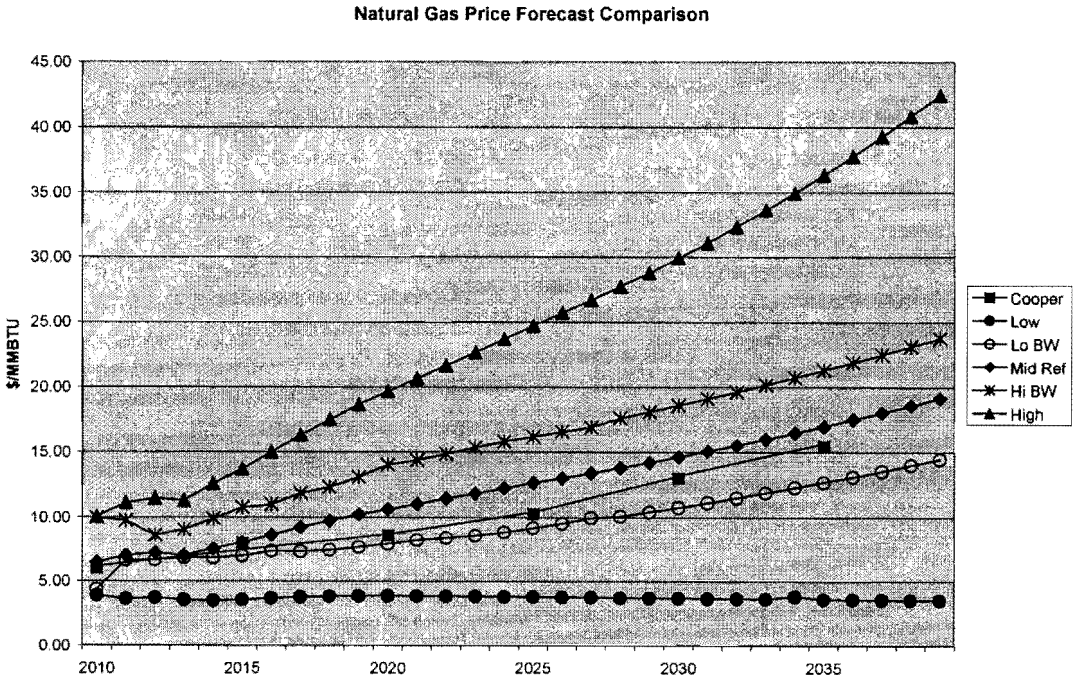


PEF - Updated Fuel Forecasts

In preparing the updated CPVRR analysis, PEF used the same approach to prepare a fuel forecast update for this docket that was used to prepare the cost-effectiveness analysis in the need determination proceeding and the last two NCRC proceedings. Witness Lyash included PEF's updated fuel forecasts in an exhibit to his direct testimony. PEF again relied upon recent long-term fuel projections from widely accepted industry sources, PIRA Energy Group and Global Insight, to provide the basic price forecast. The approach established PEF's basic fossil fuel forecasts as its medium price forecast. For residual oil, natural gas, and coal, PEF developed high and low price forecasts based on the 90th percentile above and below the basic, mid-reference fuel price forecast. The high and low price forecasts specified a range that allows for possible price outcomes and the uncertainty of price forecasts in the economic analysis. However, while the previously filed analyses used low, mid, and high fuel forecasts, 2010 update used two more fuel forecasts in addition to the low, mid, and high cases. The additional forecasts are referred to as the low bandwidth and high bandwidth. The new forecast scenarios fell between the mid case and the low and high case, respectively.

SACE witness Cooper testified that natural gas prices are declining and PEF's fuel forecast does not reflect reality. He offers data from the Energy Information Administration showing lower natural gas prices than what PEF used. PEF witness Lyash's rebuttal testimony noted that witness Cooper's testimony about fuel forecasting is similar to what witness Cooper offered last year, which was rejected by us. As mentioned above, PEF used widely accepted industry sources for fuel cost forecasting, as was accepted by us last year. In addition, while witness Cooper relies on a single price forecast, PEF's feasibility assessment is based on several sources and a range of fuel cost scenarios. Other intervenors offered no alternative fuel forecasts.

We analyzed the range of projected fuel prices and plotted the natural gas prices used by PEF and SACE witness Cooper. Since SACE witness Cooper's exhibit was not accompanied by a data table, we approximated values from witness Cooper's Exhibit 39 graph. PEF's five natural gas pricing forecasts were plotted from PEF witness Lyash's Exhibit 27, pages 4-8. As the resulting graph clearly displays, witness Cooper's price forecast falls below PEF's Mid-Reference fuel price that Cooper referred to in his testimony and his exhibit. However, SACE witness Cooper's reliance on only one price reference led him to overlook two PEF price scenarios that fall below the price forecast Cooper used. PEF used these two price scenarios, Lo and Lo Bandwidth, as well as the Mid-Reference, Hi Bandwidth, and Hi price scenarios in its updated CPVRR calculations. The natural gas price forecast graph is shown below:



We find that PEF has considered a sufficient range of natural gas price forecasts that can realistically be expected to include the actual prices as the years pass. Witness Cooper's forecast actually validates what staff considers the most likely fuel price forecast, PEF's Mid-Reference

Forecast, because the projected prices are relatively close. We, therefore, find that PEF's updated fuel forecasts are reasonable for purposes of evaluating its LNP costs and benefits.

PEF - Environmental Forecasts

Order No. PSC-08-0518-FOF-EI from the Need Determination, at page 15, contains the following language lending insight to our intent regarding the long-term feasibility of PEF's LNP:

> We also find that the CO_2 [carbon dioxide] price projections used in the cost-effective analysis represent a reasonable range of forecasts based upon CO_2 compliance cost studies available to PEF at the time that the cost-effective analysis was undertaken. Since the price forecasts are based upon on-going federal CO_2 legislation, we find it appropriate that PEF provide updated cost information as part of its annual feasibility report.

PEF used the same approach to prepare an environmental forecast update for this docket that was used to prepare the cost-effectiveness analysis in the need determination proceeding and the last two NCRC proceedings. Witness Lyash included PEF's updated emissions cost estimates in an exhibit to his direct testimony. PEF used four CO_2 compliance cost scenarios in its cost-effectiveness analysis and a scenario with no CO_2 costs, as in past analyses.

As was the case with fuel cost forecasts above, SACE witness Cooper used an alternate projection of CO_2 costs from the Environmental Protection Agency. Meanwhile, witness Lyash observed that witness Cooper again isolated on a single source estimate. In contrast, PEF used several cost estimate scenarios, including zero cost, in its feasibility assessment. In PEF's updated CPVRR analysis, 50 percent of the zero-cost CO_2 scenarios showed the LNP was more cost-effective than comparably-sized gas plants. In this worst-case scenario, the LNP still compared nearly equivalent to a gas plant resource plan. Other intervenors offered no alternative environmental forecasts.

We observe that there is continued uncertainty regarding the future legislation of CO_2 as well as potential issues regarding the timing of filing requirements and on-going legislation. While there is currently no legislation placing a cost on CO_2, we observe that the consensus is that Congressional action will place a value on this greenhouse gas in the near future. We find that using a range of CO_2 forecasts in its analysis of feasibility provides PEF with a reasonable view of what the future may hold, as compared to the one-dimensional forecast offered by SACE witness Cooper.

We find that PEF provided an acceptable updated cost estimate with additional support of an updated CPVRR analysis. Together with PEF's updated fuel and environmental forecasts, as well as continued consideration of joint ownership, discussed below, PEF met our request for current information. We find that PEF presented a convincing case in showing the LNP is economically feasible.

PEF - Regulatory Feasibility of LNP

SACE witness Gunderson challenged the regulatory feasibility of the LNP, citing delays in the process of obtaining a COL and geotechnical issues at the Levy site. PEF rebutted that the NRC is continuing its review of the AP1000 design and the LNP COL, and that witness Gunderson omitted the fact that State regulatory approval of the LNP came from the Governor and Cabinet sitting as the Siting Board on August 11, 2009. In addition, the NRC issued the Draft Environmental Impact Statement on August 6, 2010.

PEF acknowledged existence of some regulatory uncertainty that could impact the project. There continues to be discussions at the state and federal level concerning required levels of power production from renewable resources and power plant emission regulations, like those proposed to potentially address greenhouse gases such as carbon dioxide. While enactment of legislation or regulation in these areas could have an impact on the LNP, of most concern to PEF is the nuclear cost recovery statute. Since nearly unanimous support of the 2006 legislation creating nuclear cost recovery provisions, during the course of the recession, the statute has more recently come under attack by some legislators. PEF witness Lyash stated:

> If that support did materialize for ending or altering the alternative cost recovery provisions of the nuclear cost recovery statute then the LNP likely would become infeasible. That does not appear to be the case. Florida executive and legislative energy policies behind the adoption of the nuclear cost recovery statute have not fundamentally changed. There still appears to be general legislative and state executive support for the development of nuclear generation in the state.

The current absence of legislation to alter or end the nuclear cost recovery provisions, and lack of any indications that NRC filings will be denied, lead us to find that the LNP still retains regulatory feasibility.

PEF - Technical Feasibility of LNP

PEF asserted that the AP1000 design it intends to employ in the LNP is a viable nuclear technology. The NRC previously approved the AP1000 basic design and is continuing its review toward approving the revision of the design. SACE witness Gunderson challenges the technical feasibility of the AP1000. However, his views are unsupported, and are substantially the same as those dismissed by us in the 2009 proceeding as unsupported.

Many of the questions the NRC had regarding the Levy site that were discussed during the nuclear cost recovery proceeding last year are being resolved. Following a NRC audit in late September 2009, the NRC staff indicated that new results from field investigations appear to resolve many of their previous geotechnical questions related to karst[13] and the foundation support at the site. The NRC requests for additional information following that site audit support

[13] Karst is a term geologists use to describe a landscape found on carbonate rocks, such as the limestone of the Florida peninsula. Karst contains such features as caves, sinkholes, large springs, and sinking streams.

the NRC staff comments at the audit. The karst-related and other geotechnical site risks are receding.

Given that the LNP schedule would be delayed when the NRC did not approve PEF's request for a Limited Work Authorization (LWA), PEF reviewed other potential risks it might face, such as economic conditions, load growth impacts, capital markets, and state and federal energy and environmental policies and regulations. The additional time necessary for several NRC review activities leading to issuance of the COL resulted in PEF calculating the minimum schedule shift of 36 months. After a detailed review of these factors, PEF came to the decision that a 36-month delay would not provide enough "float" time should other uncertainties further jeopardize the schedule. PEF, therefore, adopted a 60-month shift as the best schedule for its customers and the Company, thus giving LNP Unit 1 an in-service date of 2021.

NRC's previous certification of the AP1000 design, its continuing review of the design revision PEF will use, and resolution of geotechnical concerns at the Levy site persuade us to find that the LNP is technically feasible.

PEF - Funding Feasibility of LNP

In addition to elements of economic feasibility pursuant to Order No. PSC-08-0518-FOF-EI, we find that the availability of funding for the project shall also be considered. While PEF's credit rating was downgraded one notch by Moody's Investor Services since the last NCRC proceeding, not all rating agencies took action regarding PEF's credit rating, and the Company continues to demonstrate it has access to capital on reasonable terms. PEF sees that the consistent theme among investment analysts is that the current negative outlook by some is short term, primarily prompted by the economic downturn in Florida. As Florida's economy recovers, economic risk should be reduced.

We find that PEF's current access to capital markets is confirmation of continued funding feasibility.

PEF - Joint Ownership of LNP

PEF continued exploring joint ownership with a number of companies. In addition, its cost analysis included consideration of three levels of ownership by PEF: 100 percent, 80 percent, and 50 percent. Thus far, however, none of those who continue to express interest in joint ownership have committed to such an agreement.

PCS Phosphate claimed that expected joint ownership participation has been lost. However, when a Commissioner questioned PEF witness Lyash regarding the contention that joint ownership has been lost, he replied, ". . . we have and we continue to pursue that, and those discussions are active."

OPC argued that PEF conceded that joint ownership is critical to the viability of the LNP, citing PEF witness Lyash's testimony that the current level of joint ownership activity has lessened. OPC's argument, however, was contradicted by the record. In response to a question from a Commissioner about whether joint ownership was a significant risk issue, witness Lyash responded:

> I don't consider joint ownership a risk issue. I do consider it a positive step that we can take to mitigate other risks and to mitigate customer price impact. It is a significant part of our discussions as we go forward. It will not in and of itself cause a specific decision on the project, but we will consider it at every step of the path.

We believe, however, that OPC has taken PEF witness Lyash's testimony out of context. In response to an OPC question about discussions with potential joint owners being "materially less active," witness Lyash responded:

> I'm not sure what you mean by materially less active. I would say that they are consistent with where we are at in the project schedule revision and negotiation phase. There is no lessening of interest, there is no lessening of exchange of relevant information, but the level of activity is somewhat less because a lower level of activity is warranted.

FIPUG similarly argued that lack of any joint ownership agreement is the primary reason we should find the LNP infeasible. FIPUG, joined by PCS Phosphate, also cited the 2009 and 2010 Ten-Year Site Plans from Seminole Electric Cooperative as evidence that at least one potential joint owner had concerns with the uncertain status of the LNP and moved on to other options. The Seminole 2009 Ten-Year Site Plan projected joint ownership in the LNP, while the 2010 plan replaced the LNP with 4 combustion turbines. PEF witness Lyash explained that these 4 units are peaking units that operate only about 10 percent of the time when demand is at its peak. The combustion turbines, therefore, cannot be considered replacements for the base load capability of a nuclear unit. In addition, Seminole's 2010 Ten-Year Site Plan did not project beyond 2020, so Seminole's thinking about the revised LNP in-service date of 2021 was not shown.

As discussed above, even at 100 percent ownership, the LNP is estimated to be cost-effective under a majority of the sensitivities. In contrast to OPC's and FIPUG's arguments, we were persuaded that lack of joint ownership of the two Levy units at this time will not, in and of itself, make the LNP infeasible. We agree with PEF witness Lyash that joint ownership does not affect overall cost-effectiveness but may have a significant impact on rates for PEF customers. PEF should continue to weigh the short-term benefits of lower rates for its customers against the long-term benefits of significant fuel savings from a fully owned LNP. Furthermore, we accept PEF's characterization that the level of activity with potential joint owners was in line with PEF's current level of activity on the project, but has not ceased.

Therefore, we approve what PEF has submitted as its annual detailed analysis of the long-term feasibility of completing the Levy Units 1 & 2 project. We find that PEF has offered a

fully vetted, transparent, and convincing discussion of its selection of a course of action. In doing so, a preponderance of the evidence shows PEF fully considered the economic, regulatory, technical, funding, and joint ownership considerations impacting the feasibility of the project. While PEF acknowledged continuing uncertainty in virtually all these areas, all appear to point toward the LNP being feasible at this time.

PEF - Combined Operating License of LNP

This issue addresses the reasonableness of PEF's decision to continue pursuing a COL for the LNP. We note that acquiring a COL is a prerequisite for the safety-related construction and operation of a nuclear power plant. Reference to COL activities in the issue statement serves to show the LNP status as progressing towards commercial operation as opposed to project cancellation. Therefore, this issue essentially addresses the reasonableness of continuing with the LNP in the event that the project is determined to be feasible discussed above.

Addressed more fully below, PEF explicitly considered but rejected project cancellation in response to events that transpired after PEF submitted its applications to the NRC. On July 30, 2008, PEF submitted LWA and COL applications to the NRC for the LNP. We note that we previously addressed, by Order PSC-09-0783-FOF-EI, the prudence of PEF's 2008 LNP activities. We acknowledged that:

> PEF believed its requested NRC review schedule for the LWA and COLA was necessary to achieve the 2016 and 2017 in-service dates. No party challenged PEF's need to secure its proposed LWA to meet 2016 and 2017 in-service dates.

On December 31, 2008, PEF entered into the EPC agreement with Shaw/Westinghouse. The project schedule which formed the basis for the EPC agreement was predicated on receiving an LWA from the NRC which would allow certain safety related work to proceed before the COL was issued. However, on January 23, 2009, the NRC staff informed PEF that review of the LWA request would take as long as the review of the combined operating licensee application (COLA).

The NRC's LWA determination was memorialized in the NRC's LNP review schedule issued in late February 2009. As a result of the NRC's determination, PEF withdrew its LWA. On May 1, 2009, PEF announced a schedule shift of at least 20 months. This announcement gave rise to questions during the 2009 NCRC proceeding concerning the timing of PEF's decision to enter into the EPC agreement. These questions were addressed in Order No. PSC-09-0783-FOF-EI, at page 30, where we stated "we are persuaded that PEF's actions and planning regarding an LWA leading up to the signing of an EPC contract were reasonable and consistent with good business practices." No party appealed the order.

We note that the full ramifications of the NRC's determination were not addressed in the 2009 NCRC proceeding because impacts to the EPC contract were not known at the time, and as noted below, PEF did not complete its analyses until early 2010. With the NRC LWA determination in 2009, the NRC would not authorize excavation and foundation preparation work until the COL is issued. Without an LWA to perform excavation and foundation

preparation work prior to COL issuance, there would be a minimum 20 month shift in the original LNP schedule. However, the 2008 schedule and costs to perform excavation and foundation preparation work were no longer reasonable because of the NRC's determination to complete its LWA and COL review on the same date. On April 30, 2009, PEF notified Shaw/Westinghouse that PEF was enacting a partial suspension clause of the EPC contract for a period of at least 20 months. PEF requested analyses for potential amendment of the EPC agreement and various scenarios considering 24 and 36 month shifts in project schedules. These analyses formed the basis for PEF's announced plan to go forward with the LNP.

Shaw/Westinghouse submitted a response on August 13, 2009. From August through October, PEF analyzed and evaluated the schedule shift proposals and, based on that evaluation, PEF requested additional schedule analysis impacts. The Senior Management Committee (SMC), at an October 15, 2009 meeting, expressed concern that these shift scenarios may not provide the best long-term option given the current economic conditions in the state. The LNP team was tasked to reevaluate the schedule with longer-term suspension options and assess the following options:

- Cancel the LNP;
- Cancel the EPC contract while continuing the COL efforts;
- Cancel current EPC purchase orders and suspend the EPC contract while maintaining all beneficial terms and conditions and continuing with COL efforts;
- Continue with a 36 month schedule shift.

On January 20, 2010, the NRC issued a revised review schedule extending the target date for the final environmental impact statements by about ten months. Due to increasing NRC review schedule concerns, PEF questioned the reasonableness of a 36-month schedule shift with in-service dates in 2019 and 2021 for Levy Units 1 and 2, respectively. The 36-month LNP schedule shift scenario appeared to lack "float" or allowance for delays in the project schedule. PEF witness Lyash stated that, "the totality of our assessment that moving it to the 2021/2022 in-service time we felt was the optimal decision."

On February 15, 2010, the LNP team presented its evaluations to the SMC. On March 26, 2010, PEF signed EPC Amendment 3 to resolve the impact of the schedule shift. We observe that implementation of EPC Amendment 3 and continued efforts to secure the COL for the LNP are the underlying assumptions reflected in PEF's requested 2010 and 2011 recovery amounts.

We note that the above timeline and summary of PEF's actions are not disputed by any party. Audit staff witnesses Carpenter and Coston reviewed PEF's approach to decision-making and concluded that PEF's approach was reasonable.

SACE witnesses Cooper and Gunderson characterized PEF's COL activities as "line sitting" or "site banking." Witness Cooper stated, "[i]n my opinion, it is not reasonable or prudent to allow PEF and FPL to incur additional costs of these proposed reactors from Florida ratepayers so that the utilities can do nothing more than sit in line until they themselves determine if completion of the reactors is feasible." Witness Gunderson defined site banking as a strategy that is ". . . entirely focused upon funding only the necessary NRC requirements for obtaining a COL without any real demonstrated commitment to actually constructing these proposed new reactors." Witness Gunderson stated, "[t]he ultimate conclusion of my analysis is that neither PEF nor FPL have demonstrated that completion of these reactors is feasible, and as a result incurring additional costs for site banking is unreasonable and imprudent." We find both witness Cooper and Gunderson recognize PEF is pursuing a COL yet offer their respective characterizations of "line sitting" or "site banking" because of their opposition to the LNP being found feasible. We find SACE witnesses Cooper and Gunderson do not present any additional analysis concerning the reasonableness of PEF's decision to continue pursuing a COL.

OPC witness Jacobs clearly stated his opinion regarding the cancellation of the LNP. The following question and answers occurred during cross-examination:

> Q. Dr. Jacobs, is it your opinion that Progress Energy Florida should cancel the Levy nuclear project?
> A. No, that's not my opinion at this time.
> Q. And is it your opinion, Dr. Jacobs, that Progress Energy Florida should terminate the EPC agreement and cancel the Levy nuclear project?
> A. No, it is not.

Nevertheless, witness Jacob expressed a view that uncertainty exists and there must be a balance between the risk and cost to ratepayers. He stated:

> If it is certain that the project would continue, then the company's option would be the proper one. If it is certain that the project would be canceled, then it should be canceled sooner rather than later.
>
> However, if there is uncertainty, as there is, there must be a balance between the risk and the cost to the ratepayers. And, therefore, I recommend in my testimony that the company be required to analyze the fourth scenario that I have identified, and in light of this analysis and the identified risks justify the option that they have, they have chosen.

Witness Jacobs' recommendation has two elements. The first and most obvious element is that we should order PEF to analyze a scenario in which the LNP is cancelled after receipt of the COL in late 2012. The second element is found in his expression that in addressing uncertainty ". . . there must be a balance between the risk and costs for the ratepayers" Thus, it appears that the purpose of soliciting the analysis is to use the analysis in establishing, as witness Jacob stated, "a balance between the risk and cost to the ratepayers."

OPC acknowledged that PEF provided the analysis of cancellation after receipt of the COL as sought by its witness. On rebuttal, PEF witness Elnitsky explained that the analysis, his exhibit JL-6, was considered by the SMC during evaluation of project cancellation options. Consequently there is no longer a need or basis for us to order PEF to provide the analysis requested by OPC witness Jacobs.

The next element in witness Jacob's recommendation, establishing a balance between the risk and cost to the ratepayers, in our view, appeared in OPC's post-hearing brief as a "risk sharing" mechanism. The specific action OPC requested in implementing its proposed risk sharing mechanism results in (i) deferring recovery of 75 percent of PEF's estimated true-up amount for 2010 and 75 percent of PEF's projected 2011 amounts that would otherwise be eligible through the NCRC, (ii) consideration of recovery of the deferred amounts in the 2011 NCRC proceeding, and (iii) holding the eligibility for recovery on a Commission finding that "PEF has a realistic chance of completing the plant in a manner that is beneficial to customers." We note that OPC's brief did not state whether the actions requested would only apply to the 2011 NCRC or whether there would be additional ongoing risk sharing actions impacting 2012 and subsequent NCRC proceedings. Additionally, OPC's brief did not demonstrate how the proposed actions achieved the intended goal of risk sharing. We note that OPC's post-hearing proposal appeared late in the process, which does not allow for careful and complete analysis.

Additionally, we note that our authority to require risk sharing was addressed above. Consistent with our finding discussed above, and the late nature of OPC's proposed risk sharing mechanism, we decline to adopt OPC's risk sharing mechanism.

PEF did not dispute that there are greater uncertainties facing the LNP today. PEF believes it has sufficiently mitigated the risks and uncertainties associated with the project by focusing on the COL under the terms of the amended EPC agreement. PEF opined that OPC witness Jacobs' assessment of risks was incomplete because he did not evaluate the mitigation of risks through the EPC amendment. EPC Amendment 3 provided for deferral of approximately $1 billion in project expenses until after the COL is obtained.

We note that the underlying concern raised by OPC's witness and again in OPC's proposed "risk sharing" mechanism is that of rate impacts. The briefs of FIPUG and PCS Phosphate express similar concern and urge Commission action. Estimates of rate impacts based on a 1000 kWh usage residential monthly bill were presented in the need proceeding for the LNP. At that time, the maximum estimated rate impact through the NCRC would be $28.96 in 2015. In this proceeding, the updated estimate of the residential bill for 2015 is down to $6.51. However, the maximum rate impact is now $43.42 and occurs five years later in 2020. On a simple ratio basis, and ignoring the time value of money, the updated information shows that the maximum NCRC residential bill impact may have increased 50 percent.[14] We find that rate impacts are substantially a consequence of the timing of recovery. Twice PEF implemented deferrals of recovery amounts, as a means to mitigate rate impact.[15] We, by Order No. PSC-09-0783-FOF-EI, granted PEF flexibility 'to annually reconsider changes to the deferred amount

[14] 50% = 100% x ($43.42 – $28.96) ÷ $28.96
[15] Attachment B, Item 10 page 4;Item 12, page 38

and recovery schedule." Given that all parties view risk differently and that the NCRC is, pursuant to Section 366.93, F.S., an alternative cost recovery mechanism, the unique facts applicable to PEF's LNP may warrant a review of options. However, the testimony in this proceeding lacks rigorous analysis of specific or alternative rate management and/or "risk sharing" mechanisms.

Notwithstanding, PEF asserted that its decision to continue the LNP was reasonable and is not rendered unreasonable simply because intervenors prefer a different or a conditional decision. The fundamental question is what energy policy the State of Florida wants to support. PEF believes that nuclear continues to be an important part of the long-term energy mix and that to walk away from this project would be a mistake. PEF witness Lyash characterized his feeling about the project as ". . . not bullish, but eyes wide open to both the costs and the benefits." These are the same benefits that the Florida Legislature recognized in the 2006 legislation and we recognized in granting the need determination for the LNP. These benefits include fuel diversity, carbon free generation, reduced reliance on fossil fuels, and an estimated $100 billion in fuel savings to customers over the 40 years of operation.

Therefore, we find that PEF has offered a fully vetted, transparent, and convincing discussion of the reasonableness of continuing the LNP compared to cancellation at this time. We find that PEF's decision to continue pursuing a COL for the LNP reasonable. We do not find that the record supports adoption of the risk sharing mechanism as proposed by OPC. Our findings affords PEF the opportunity to continue forward with the LNP in an effort to secure the expected long-term benefits and also allows the opportunity to assess the appropriateness of any LNP specific risk sharing mechanism in a subsequent proceeding.

PEF – Annual Details Analysis of the Long-term Feasibility of Completing the Crystal River Unit 3

This issue addresses review and approval of PEF's detailed long-term feasibility analysis of continuing construction and completing the CR3 Uprate project as required by Rule 25-6.0423, F.A.C.

In an effort to mitigate the economic risks associated with the long lead-time and high capital costs associated with nuclear power plants, the Florida Legislature enacted Sections 366.93 and 403.519(4), F.S., during the 2006 legislative session. Section 366.93(2), F.S., requires us to establish, by rule, alternative cost recovery mechanisms for the recovery of costs incurred in the siting, design, licensing, and construction of a nuclear power plant. We adopted Rule 25-6.0423, F.A.C., to satisfy the requirements of Section 366.93(2), F.S. Rule 25-6.0423(5)(c)5, F.A.C., states:

> By May 1 of each year, along with the filings required by this paragraph, a utility shall submit for Commission review and approval a detailed analysis of the long term feasibility of completing the power plant.

PEF witness Franke explained that the CR3 Uprate project was designed as a three-phase endeavor. The first phase was completed during a 2007 refueling outage with the unit returning

to on-line service in January 2008. The second phase was completed on schedule and on budget during the 2009 refueling outage. The final phase, referred to as the Extended Power Uprate (EPU), is scheduled to occur during the next refueling outage, in the fall of 2012. While PEF is performing the planning required for the third phase, it is also tracking LAR submissions from other utilities to determine the right timing for submitting the EPU LAR to the NRC. PEF has seen nothing suggesting its LAR will not be approved.

OPC witness Jacobs suggested that PEF should have waited until the NRC approved the LAR for the EPU before committing to expenditures for the third phase of the uprate. However, he did not suggest that the CR3 Uprate project is infeasible or that PEF's work toward completion should be stopped until the NRC approves the LAR.

OPC speculated in its post-hearing brief about "likely NRC-approved power levels." The other intervenors joined in OPC's speculation. While much testimony and exhibits in the record address concern about whether the NRC will approve the LAR, nothing in the record suggests that NRC approval of the LAR might be for a power level less than the 180 MW being requested by PEF. While this is a possibility, the lack of any testimony, questions, or other evidence in the record to that effect suggests that none of the parties considered NRC approval of a lower power level as probable. We find that the annual NCRC proceeding provides the forum for review of such a situation shall it arise.

PEF witness Franke testified that PEF's feasibility analysis of the CR3 Uprate project considered qualitative and quantitative factors. Qualitative analysis included assessment of technical and regulatory capability to complete the EPU. Analysis of the technical capability to complete the project included several feasibility studies in 2009. These studies confirmed that the work and EPU component installation can be completed and the EPU achieved. The studies added to the confidence gained from having completed two of the three phases of the project on schedule with no material issues.

PEF also believes that the various regulatory and legal approvals, such as the LAR, can be obtained. The Company studied the progress of LAR reviews conducted by the NRC and established the EPU schedule based on the historical time needed to complete the NRC review process. Another factor increasing LAR review time is an extended outage through 2010 due to matters unrelated to the CR3 Uprate project. This extended outage will push back the next refueling outage to fall 2012 when actual work on the third phase of the uprate will begin.

PEF completed an updated, quantitative CPVRR economic analysis that included an update of the fuel cost savings to customers. This analysis was completed assuming completion of the EPU during a planned 2011 refueling outage. PEF believes a shift in the refueling outage date to fall 2012, due to the 2010 extended outage, will not materially impact these numbers. The results show that the completed uprate will provide customers substantial fuel savings for the extended life of the plant. While PEF has opted to install a new low pressure turbine at additional expense of $47 million, this option shows an estimated NPV fuel savings of over $800 million. When compared to the remaining investment, it is clearly beneficial to customers to move forward.

Therefore, based upon the record evidence and our analysis above, we approve what PEF has submitted as its annual detailed analysis of the long-term feasibility of completing the Crystal River Unit 3 Uprate project. The Company presented evidence that it examined technical, regulatory, and economic factors impacting the long-term feasibility of the project. A review of this information demonstrated that the project remains feasible.

PEF - System and Jurisdictional Amounts for 2009 for the Crystal River Unit 3 Uprate Project

This issue addresses PEF's request concerning the reasonableness and prudence of 2009 final costs and true-up amount for the CR3 Uprate project. We note that two concerns have been identified by the parties concerning 2009 CR3 Uprate project costs. The first is associated with any cost impacts related to PEF's LAR development process, as addressed previously. The second concern is associated with OPC's assertion that PEF has not met the annual variance explanations requirements of Rule 25-6.0423(8)(d), F.A.C.

PEF witness Garrett provided support for the activities and methods used to determine the requested final recovery amount. PEF witness Franke provided descriptions of activities that are associated with the 2009 final costs and final true-up request.

Witness Garrett showed, the 2009 CR3 Uprate project final true-up amount as a negative $244,765. PEF is requesting that this amount be used in determining the 2011 total NCRC recovery amount. The requested amount includes the following items: over-projection of 2009 operation and maintenance (O&M) expenses in the amount of $9,999, a $122,005 under-projection of carrying costs, and a $356,771 over-projection of other adjustments.

Witness Garrett identified final 2009 CR3 Uprate project costs which were used in calculating the final true-up amount. The costs include: capital costs in the amount of $118,140,493 ($87,458,545 jurisdictional), O&M expenses of $821,773 ($762,529 jurisdictional), carrying costs of $14,351,595, and a base revenue requirement of negative $396,018.

In support of the requested recovery amounts, PEF witness Franke stated:

> During 2009, PEF incurred reasonable and prudent costs to plan for and carry out the second phase of the project, which occurred during the 2009 refueling outage. PEF also incurred some costs in support of the third phase of the project, currently scheduled for the next CR3 refueling outage. This included costs necessary to secure long lead-time equipment necessary for the phase 3 outage work. The work performed for the second phase of the uprate project was completed and the equipment was installed during the 2009 refueling outage.
>
> PEF took adequate steps to ensure that the costs it incurred were reasonable and prudent.

As discussed the issues above, OPC believes that PEF's management oversight of the LAR development process was inadequate and therefore certain 2009 costs should be

disallowed. OPC stated, "[t]he fundamental issue is this: was the cost associated with the expert panel, the LAR re-write and company staff costs excessive or duplicative based on sloppy work that PEF did not properly oversee?" OPC argued it was, and recommends that we disallow $6 million of PEF's 2009 costs. OPC stated that "[t]his recommended amount represents the rough aggregate of the [redacted] for the company costs to fix the mess." In addition, OPC suggested that we withhold a determination of prudence concerning total 2009 and 2010 costs related to the LAR re-write in order to allow further review.

OPC also suggested that significant increases in the estimated total project cost (from $439 million to $512 million) are "unexplained and unjustified." Given this, OPC asserted that PEF has not met the annual variance explanation requirement of Rule 25-6.0423(8)(d), F.A.C. In addition, due to its concerns with PEF's lack of budget adherence and, project management, contracting, and oversight controls that appear to be inadequate to control costs, OPC suggested, "[t]he Commission should allow the recovery on a preliminary basis of the remaining 2009, and the projected and estimated 2010 and 2011 costs but should not make a determination of prudence on any of the dollars pending further explanation and justification."

As discussed in the issues above, FIPUG stated that there are indications of inadequate management, and that PEF did not demonstrate that the costs related to the revised LAR are prudent and reasonable. FIPUG suggested that had PEF appropriately staffed and supervised the LAR process, PEF would not have experienced a delay in preparing the LAR nor would PEF have incurred any additional costs to revise the LAR. We note that FIPUG did not offer any evidence in support of its assertion. Additionally, we find that FIPUG's arguments parallel those of OPC.

Audit staff witnesses Coston and Carpenter, as discussed above, offered a finding in their audit review report concerning the CR3 Uprate project which is directly related to 2009 costs. On page 5 of their testimony they state, "[w]e recommend that the Commission consider whether the additional costs for the LAR restructuring/rewrite and the additional scope by AREVA resulted from inadequate management oversight."

As discussed above, PEF agrees with the fact that it had inadequate management oversight over the LAR process in 2009; however, it disagrees with any conclusions that this level of oversight was imprudent or resulted in ratepayers being charged twice for the same work. PEF also disagreed with OPC that PEF has not met the annual variance explanations requirements of Rule 25-6.0423(8)(d), F.A.C. PEF states that project cost variances and explanations were included in witnesses Garrett's prefiled testimony. In addition, project variance explanations and justifications were included in witness Franke's testimony, and provided as answers to interrogatories and data requests, many of which are part of the record in this docket. PEF also noted in its brief that witness Franke provided explanation and justification information during his deposition, a copy of which is a part of the record.

We have reviewed the record, and find that PEF met its obligations under Rule 25-6.0423(8)(d) F.A.C. Therefore, we find that no Commission action is needed in that regard.

As discussed above, we find that the record is clear that during 2009 PEF did not devote adequate resources to manage the LAR development process effectively. However, we do not find that this fact provides us with a clear and sufficient basis on which to make a finding that costs were imprudently incurred. We find that there is not enough information in the record, at this time, to determine whether CR3 Uprate costs have been negatively affected by PEF's management actions concerning the LAR development. Testimony and positions of the parties concerning potential cost impacts range from $0 to over $40 million. Given this, we are not persuaded that we should adopt, at this time, either OPC's $6 million disallowance, or FIPUG's exclusion of all additional AREVA costs.

Nevertheless, we find OPC's suggestion to withhold a finding of prudence for the 2009 period has merit because there is not enough information in the record at this time to determine that a specific amount of costs were imprudently incurred. However, we note Rule 25-6.0423(5)(c)2, F.A.C., requires us to make a finding of prudence. The rule states in part:

> The Commission shall, prior to October 1 of each year, conduct a hearing . . . to determine the reasonableness of projected construction expenditures and the prudence of actual construction expenditures expended by the utility, and the associated carrying costs.

We have interpreted the Rule to require us to make a finding concerning PEF's prudence based on the record presented. We do not believe the Rule limits our ability as to how we frame our finding. Thus, we find that there is not enough information in the record at this time to determine the prudence of PEF's 2009 CR3 Uprate costs. We find that the parties and ratepayers' interests would be best served by affording them the opportunity to fully investigate and present the facts and circumstances surrounding the management of the CR3 Uprate LAR development process and ascertain the impacts it had on actual 2009 costs, if any. We shall revisit the issue of PEF's prudence concerning 2009 CR3 Uprate costs during the 2011 NCRC proceeding.

We note that beyond those items identified in the issues above, no other concerns where identified with the 2009 final costs and final true-up amount for the CR3 Uprate project. Consistent with our findings above, our verification of PEF's calculations and true-up amount, and a preponderance of the evidence in the record, we find that PEF has demonstrated the reasonableness of its requested 2009 final cost and final true-up amount for the CR3 Uprate project.

Therefore, based on the record evidence and our analysis above, we approve as reasonable the following Crystal River Unit 3 Uprate project final 2009 costs: capital costs in the amount of $118,140,493 ($87,458,545 jurisdictional), O&M expenses of $821,773 ($762,529 jurisdictional), carrying charges of $14,351,595, and a base revenue requirement of $396,018. We also approve as reasonable a final 2009 true-up amount of negative $244,765 for use in determining the 2011 NCRC recovery amount. The final true-up amount is the summation of the following factors: $9,999 over-projection of 2009 O&M expenses, $122,005 under-projection of carrying charges, and a $356,771 over-projection of other adjustments. Also, we find that there is not enough information in the record at this time to determine the prudence of PEF's 2009

CR3 Uprate costs. Therefore, we shall revisit the issue of PEF's prudence concerning 2009 CR3 Uprate costs during the 2011 NCRC proceeding.

PEF - System and Jurisdictional Costs and Estimated True-up Amounts for Crystal River Unit 3 Uprate Project

This issue addresses PEF's request concerning the reasonableness of 2010 estimated costs and estimated true-up amount for the CR3 Uprate project.

PEF witness Foster provided support for the activities and methods used to determine the requested estimated recovery amount. PEF Witness Franke provided descriptions of activities that are associated with the 2010 estimated costs and estimated true-up request.

Witness Foster showed the estimated 2010 CR3 Uprate project true-up in the amount of $2,379,874. PEF requested this amount be used in determining the 2011 NCRC recovery amount. The estimated project true-up amount includes the following items: under-projection of 2010 O&M expenses in the amount of $895,281, a $2,231,369 under-projection of carrying costs, and a $746,776 over-projection of other adjustments.

Witness Foster identified estimated 2010 costs which were used in the true-up calculation. These costs include: capital costs in the amount of $66,334,227 ($32,827,539 jurisdictional), O&M expenses of $1,234,649 ($1,109,484 jurisdictional), carrying costs of $7,557,070, and a base revenue requirement of negative $746,776.

In support of the requested recovery amounts, witness Franke stated:

> In 2010, PEF incurred reasonable and prudent cost to complete work for the second phase of the CR3 Uprate project during the 2009 refueling outage called the R16 outage. PEF also reasonably and prudently incurred and will continue to incur costs in 2010 to move forward with work for the third and final phase of the project and to finalize the Company's License Amendment Request ("LAR") for the project and support that request before the NRC. Work on the final phase of the CR3 Uprate project and to obtain NRC approval of the LAR for the full uprate will continue in 2011 as PEF prepares for the next CR3 refueling outage and the completion of the CR3 Uprate project.
>
> PEF has also provided reasonable projections for costs to be incurred during the remainder of 2010.
>
> These projected costs were developed using the best available information to the Company at this time.

We note that beyond those items identified in the issues above, no other concerns were identified with the 2010 estimated costs and estimated true-up amount for the CR3 Uprate project. Consistent with our findings above, our verification of PEF's calculations and true-up amount, and a preponderance of the evidence in the record we find that PEF has demonstrated

the reasonableness of its requested 2010 estimated costs and estimated true-up amount for the CR3 Uprate project.

Therefore we approve as reasonable the following Crystal River Unit 3 Uprate project estimated 2010 costs: capital costs of $66,334,227 ($32,827,539 jurisdictional), O&M expenses of $1,234,649 ($1,109,484 jurisdictional), carrying charges of $7,557,070, and a base revenue requirement of negative $746,776. We also approve as reasonable an estimated 2010 true-up amount of $2,379,874 for use in determining the 2011 NCRC recovery amount. The estimated true-up amount is the summation of the following factors: $895,281 under-projection of 2010 O&M expenses, $2,231,369 under-projection of carrying charges, and an over-projection of other adjustments in the amount of $746,776.

PEF - Projected 2011 Costs for the Crystal River Unit 3 Uprate Project

This issue addresses PEF's request concerning the reasonableness of projected 2011 costs for the CR3 Uprate project.

PEF witness Foster provided support for the activities and method used to determine the requested 2011 projected recovery amount. PEF witness Franke provided descriptions of activities that are associated with 2011 period projected costs for which PEF is requesting recovery.

Witness Foster identified $13,871,686 in 2011 CR3 Uprate projected costs for which PEF is requesting inclusion in the 2011 NCRC recovery amount. The projected 2011 recovery amount includes the following items: projected 2011 O&M expenses of $423,093, carrying costs in the amount of $10,023,829, and other adjustments in the amount of $3,424,764.

Witness Foster also identified each of the 2011 CR3 Uprate costs on which the recovery request is based. These costs include: projected 2011 CR3 Uprate costs as: 2011 capital costs in the amount of $67,828,699 ($52,297,867 jurisdictional), O&M expenses of $481,102 ($423,093 jurisdictional), carrying costs of $10,023,829, and a projected base revenue requirement of $3,424,764.

In support of the requested recovery amounts, witness Franke stated that during 2011 PEF will:

> . . . prepare for the last phase of the CR3 Uprate project, the Extended Power Uprate phase, which is scheduled for completion during the next plant refueling outage called R17. PEF recently decided that the R17 outage will take place in the spring of 2012. In 2011, PEF will incur costs to: (1) continue the engineering design work for the third phase of the uprate to be completed during the next refueling outage; (2) provide detailed field implementation planning of the engineering design work; (3) complete and submit the EPU LAR to the NRC and work through the licensing review process with the NRC; (4) develop CR3 Uprate vendor oversight plans and schedules for the R17 outage manufacturing cycle;

and (5) work on vendor selection and procure long lead equipment for the EPU work during the R17 outage.

We note that beyond those concerns identified in the issues above, no other concerns were identified with the projected 2011 costs for the CR3 Uprate project. Consistent with our findings above, our verification of PEF's calculations, and a preponderance of the evidence in the record, we find that PEF has demonstrated the reasonableness of its requested projected 2011 costs for the CR3 Uprate project.

Therefore, we approve as reasonable the following project 2011 costs for Crystal River Unit 3 Uprate project: capital cost of $67,829,699 ($52,297,867 jurisdictional), $481,102 ($423,093 jurisdictional), projected O&M expenses, carrying charges of $10,023,829, and a base revenue requirement of $3,424,764. We also approve as reasonable a projected 2011 amount of $13,871,686 for use in determining the 2011 NCRC recovery amount.

PEF - Final 2009 Prudently Incurred Costs and Final True-up Amounts for the Levy Units 1 & 2 Project

This issue addresses PEF's request concerning the prudence of final 2009 costs and true-up amounts for the LNP.

PEF witness Garrett provided support for the activities and methods used to determine the requested recovery amounts. PEF witnesses Hardison and Karp, also provided descriptions of activities associated with the final 2009 costs and final true-up amounts for the LNP.

Witness Garrett explained that the data taken from PEF's books and records are kept in accordance with general accepted accounting principals and practices, provisions of the Uniform System of Accounts, and any accounting rules and orders established by us. Witness Garrett applied these standards in the development of the 2009 LNP final true-up amount of $4,192,819 that PEF requests be included in determination of the 2011 NCRC recovery amount. This amount includes the following items: 2009 pre-construction cost over-projection in the amount of $8,749,309, $911,232 over-projection of O&M expenses, $13,845,741 under-projection of carrying costs, and a $7,619 under-projection of other adjustments. These final true-up amounts are based on the following final 2009 costs: Capital costs of [redacted] ($255,963,530 jurisdictional), O&M expenses of $4,500,975 ($4,020,056 jurisdictional), and carrying costs of $36,124,710.

The majority of Engineering, Design, and Procurement costs were incurred pursuant to the terms of the EPC agreement. The 2009 O&M expenses were related to internal labor and expenses, legal costs, and the NuStart Energy Development LLC program. PEF's 2009 LNP licensing activities included: (1) Responding to NRC requests for additional information (RAI); (2) Preparing testimony and support for the DEP Site Certification Application (SCA) hearings; (3) Developing SCA Conditions of Certification Reports; (4) Submission of COL Revision 1; (5) Responding to NRC Atomic Safety and Licensing Board intervenor motions and contentions; (6) Completing the conceptual Environmental Mitigation Plan and responding to DEP requests for additional information; (7) Continuing work on Federal permitting, the Wetland Mitigation Plan

and the Baseline Ecological Survey; (8) NRC site reviews of geotechnical and other technical evaluations; and (9) Supporting licensing activities associated with the AP1000 Design Control Document revisions and the standard sections of the Reference Plant COL. (Hardison TR 536-538)

LNP engineering activities and work included: (1) Developing a Grout Test Program; (2) Completing document reviews related to early site infrastructure, construction, and the AP1000 standard plant design; (3) Completing an offset boring program required to support specific NRC RAI questions associated with site characterization; (4) Engineering support required to respond to NRC RAIs.

The 2009 LNP related transmission activities included working on State and Federal licensing, program and project schedules and cost estimates, staffing and resource plans, external outreach and communications, project designs, transmission line route selection, land acquisition, and permitting activities

Through its brief, OPC took no position on this issue. However, we note OPC's "no position" is conditioned on the removal from recovery of all non-LNP transmission costs. Nowhere in its brief, or the testimony of OPC witness Jacobs, does OPC identify any non-LNP transmission costs. We agree with the basis of OPC's position that only costs directly related to an eligible project qualifies for NCRC recovery.

PEF witness Karp testified that PEF's 2011 NCRC cost recovery request concerning transmission-related costs currently reflects the LNP schedule shift. PEF witness Elnitsky, in his deposition, stated that "all costs associated with this Central Florida South Substation project were completely removed from the LNP, and the Company's cost recovery request." Hearing Exhibit 191 contains PEF's response to OPC Interrogatory No. 90. In this response, PEF stated that all transmission costs affected by the LNP schedule shift have been removed and transferred to general transmission operation accounts. We find that there is adequate record support to conclude that OPC's transmission related concern is resolved.

We note that beyond concerns raised regarding LNP feasibility, and the transmission concern OPC raised in this issue, no other specific concerns as to the prudence of 2009 LNP costs were identified. Consistent with findings on these issues, verification of PEF's calculations and true-up amounts, and a preponderance of the evidence in the record, we find that PEF has demonstrated its requested 2009 final costs and true-up costs for the LNP were prudently incurred.

Therefore, we approve as prudent the following Levy Units 1 & 2 project final 2009 costs: capital costs in the amount of [redacted] ($255,963,530 jurisdictional), O&M expenses of $4,500,975 ($4,020,056 jurisdictional), carrying costs of $36,124,710, and a base revenue requirement of $7,619. We also approve as prudent a final 2009 true-up amount of $4,192,819 for use in determining the 2011 NCRC recovery amount. The final true-up amount is the summation of the following factors: $8,749,309 over-projection of 2009 pre-construction cost, $911,232 over-projection of O&M expenses, $13,845,741 under-projection of carrying costs, and a $7,619 under-projection of other adjustments.

PEF - Estimated 2010 Costs and Estimated True-up Amounts for PEF's Levy Units 1 & 2 Project

This issue addresses PEF's request concerning the reasonableness of 2010 estimated costs and estimated true-up amount for the LNP.

PEF witness Foster provided support for the activities and methods used to determine the requested recovery amount. PEF witnesses Karp and Hardison also provided descriptions of activities that are associated with the 2010 estimated costs and estimated true-up request.

For the remainder of 2010, PEF will incur costs related to: (1) continuing COLA activities with the NRC; (2) executing near-term wetland mitigation activities working with the DEP and the USACE; 3) ongoing EPC contractor and vendor support for open long-lead material purchase orders and disposition activities; (4) continuing project management and federal and state regulatory support; (5) managing and supervising continuing long-lead material vendor work; (6) continuing AP1000 design support and work; (7) continuing design finalization payments in 2010 under the EPC Agreement; and (8) investigating, managing, and acquiring certain land for roads and wetlands mitigation.

The base load transmission schedule, scope, budget and work plan was realigned with the LNP schedule. Most of the LNP transmission activities were deferred past the receipt of the COL. During the remainder of 2010, costs will be incurred for environmental permitting and engineering design work, land acquisition associated with strategic right of ways, environmental impacts analysis, wetland mitigation planning.

PEF witness Foster showed, the estimated 2010 LNP true-up in the amount of $8,121,477. PEF is requesting that this amount be used in determining the 2011 NCRC recovery amount. The estimated project true-up amount includes the following items: under-projection of 2010 pre-construction cost in the amount of $11,835,352, a $745,625 over projection of O&M expenses, and a $2,968,249 over-projection of carrying charges.

Witness Foster identified estimated 2010 costs which are used in the true-up calculation. These costs include: capital costs in the amount of [redacted] ($143,951,411 jurisdictional), O&M expenses of $4,211,926 ($3,687,427 jurisdictional), and carrying charges of $50,652,578.

We note that beyond the concerns raised in the issues above, no party identified any specific concerns as to the reasonableness of estimated 2010 LNP activities or associated cost. Consistent with our findings on these issues, verification of PEF's calculations and true-up amounts, and a preponderance of the evidence in the record, we find that PEF has demonstrated the reasonableness of its requested 2010 estimated costs and estimated true-up amount for the LNP.

Therefore, we approve as reasonable the following Levy Units 1 & 2 project 2010 estimated costs: capital costs of [redacted] ($143,951,411 jurisdictional), O&M expenses of $4,211,926 ($3,687,427 jurisdictional), and carrying costs of $50,652,578. We also approve as reasonable an estimated 2010 true-up amount of $8,121,477 for use in determining the 2011

NCRC recovery amount. The estimated true-up amount is the summation of the following factors: $11,835,352 under-projection of 2010 pre-construction costs, $745,625 over-projection of O&M expense, and an over-projection of carrying costs in the amount of $2,968,249.

PEF - Projected 2011 costs for Levy Units 1 & 2 Project

This issue addresses PEF's request concerning the reasonableness of projected 2011 costs for the LNP.

PEF witness Foster provided support for the activities and methods used to determine the requested projected recovery amount. PEF witnesses Karp and Hardison also provided descriptions of activities that are associated with 2011 projected costs for which PEF is requesting recovery.

During 2011, PEF will incur costs related to: COL activities, executing near-term wetland mitigation activities, support for open long-lead material purchase orders and disposition activities, AP1000 design support and work; and investigating, managing, and acquiring certain land for roads and wetlands mitigation.

The base load transmission schedule, scope, budget and work plan was realigned with the LNP schedule. Most of the LNP transmission activities were deferred past the receipt of the COL. During 2011, costs will be incurred for environmental permitting and engineering design work, land acquisition associated with strategic right of ways, environmental impacts analysis, wetland mitigation planning.

Witness Foster, on Exhibit 5, identified $75,259,568 in 2011 LNP costs for which PEF is requesting inclusion in the 2011 NCRC recovery amount. This amount includes the following items: projected 2011 site selection and pre-construction costs in the amount of $25,056,735, O&M expenses of $3,823,883, and carrying costs in the amount of $46,378,950.

On Exhibit 5, witness Foster also identifies each of the 2011 LNP costs on which the recovery request is based. These costs include: 2011 capital costs in the amount of [redacted] ($48,464,398 jurisdictional), O&M expenses of $4,343,901 ($3,823,883 jurisdictional), and carrying costs of $46,378,950.

We note that beyond the general threshold eligibility and feasibility concerns raised by the parties, no party identified any specific concerns as to the reasonableness of projected 2011 LNP activities or associated projected cost. Consistent with our findings above, verification of PEF's calculations, and a preponderance of the evidence in the record, we find that PEF has demonstrated the reasonableness of its requested projected 2011 costs for the LNP.

Therefore, we approve as reasonable Levy Units 1 & 2 projected 2011 costs in the amount of $75,259,568 for use in determining the 2011 NCRC recovery amount. The appoved amount, based on a projected 2011 capital cost [redacted] ($48,464,396 jurisdictional), includes the following items: projected 2011 site selection and pre-construction costs in the

amount of $25,056,735, projected O&M expenses of $4,343,901 ($3,823,883 jurisdictional), and carrying costs of $46,378,959.

PEF - Total Jurisdictional Amount for PEF's 2011 Capacity Cost Recovery Clause Factor

This issue is primarily a fall-out issue that reflects decisions on all prior issues. In addition to these issues, PEF is requesting we approve an amortization of $60,000,000 from the rate management deferred balance related to the LNP. This amount would be included in the 2011 NCRC recovery amount. The rate management deferred balance consists of previously approved LNP costs whose actual recovery has been deferred in an effort to manage annual rate impacts.

With the exception of PEF, no party addressed the deferred amount to be recovered during 2011. We note our approval of the rate management plan in Order No. PSC-09-0783-FOF-EI did not set or require a particular amortization schedule be used for any recovery of the deferred balance. However, we further note that the requested amount is consistent with PEF's original program goal of recovering all deferred amounts over a five-year period.

As shown in the table below, OPC, FIPUG, PCS Phosphate, and SACE argued for adjustments to PEF's 2011 recovery level in prior issues. Based on findings and approval in all prior issues, we do not it appropriate to make any adjustment to PEF's petition.

	Topic	PEF	OPC, PCS Phosphate, FIPUG	SACE
		Petition	With Adjustments	With Adjustments
	CR3 Uprate 2009 Final True-up	$-244,765	-$6,244,765	-$6,244,765
	CR3 Uprate 2010 Estimated True-up	$2,379,874	$2,379,874	$2,379,874
	CR3 Uprate 2011 Projections	$13,871,686	$13,871,686	$13,871,686
CR3 Uprate Subtotal		$16,006,795	$10,0006,795	$10,0006,795
	LNP 2009 Final True-up	$4,192,819	$4,192,819	$4,192,819
	LNP 2010 Estimated True-up	$8,121,477	$2,030,369	$0
	LNP 2011 Projections	$75,259,568	$18,814,892	$0
Amortization of Deferrals		$60,000,000	$60,000,000	$60,000,000
LNP Subtotal		$147,573,864	$85,038,080	$64,192,819
NCRC Total 2011 Amount[16]		$163,580,660	$95,044,875	$74,199,614

[16] Numbers do not add due to rounding.

Therefore, we approve a total jurisdictional amount of $163,580,660 for the 2011 NCRC recovery amount. This amount shall be used in establishing PEF's 2011 Capacity Cost Recovery Clause factor. The total 2011 recovery amount includes $60,000,000 amortization of the rate management deferred balance.

Based on the foregoing, it is

ORDERED by the Florida Public Service Commission that the joint motion to defer the resolution of all FPL-specific issues until the 2011 NCRC is hereby approved, except regarding the issue concerning the risk sharing mechanism set forth in the body of this Order. It is further

ORDERED that FPL is authorized to include $31,288,445 as its total 2011 jurisdictional amount in the calculation of its 2011 Capacity Cost Recovery Factor.

ORDERED that PEF's activities 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. It is further

ORDERED that we decline to implement a risk-sharing mechanism, as set forth herein. It is further

ORDERED that PEF's accounting and costs oversight controls employed during 2009 for Levy Units 1 & 2 and the Crystal River Unit 3 Uprate projects were reasonable and prudent. It is further

ORDERED that the project management, contracting, and oversight controls employed by PEF during 2009 for the Levy Units 1 & 2 project were reasonable and prudent. It is further

ORDERED that we withhold making a finding concerning the prudence of the project management, contracting, and oversight controls employed by PEF during 2009 for the Crystal River Unit 3 Uprate project, especially as it relates to the LAR development process. A determination concerning the prudence of these controls and oversight activities shall be included as an issue in the 2011 Nuclear Cost Recovery proceeding. It is further

ORDERED that what PEF has submitted as its annual detailed analysis of the long-term feasibility of completing the Levy Units 1 & 2 project is hereby approved. It is further

ORDERED that we find PEF's decision to continue pursuing a Combined Operating License for Levy Units 1 & 2 reasonable at this time. It is further

ORDERED that PEF's annual detailed analysis of the long-term feasibility of completing the Crystal River Unit 3 Uprate project is hereby approved. It is further

ORDERED that we approve as reasonable the following Crystal River Unit 3 Uprate project final 2009 costs: capital costs in the amount of $118,140,493 ($87,458,545

jurisdictional), O&M expenses of $821,773 ($762,529 jurisdictional), carrying charges of $14,351,595, and a base revenue requirement of $396,018. It is further

ORDERED that we approve as reasonable a final 2009 true-up amount of negative $244,765 for use in determining the 2011 NCRC recovery amount. The final true-up amount is the summation of the following factors: $9,999 over-projection of 2009 O&M expenses, $122,005 under-projection of carrying charges, and a $356,771 over-projection of other adjustments. It is further

ORDERED that we find that there is not enough information in the record at this time to determine the prudence of PEF's 2009 CR3 Uprate costs. Therefore, we shall revisit the issue of PEF's prudence concerning 2009 CR3 Uprate costs during the 2011 NCRC proceeding. It is further

ORDERED that we approve as reasonable the following Crystal River Unit 3 Uprate project estimated 2010 costs: capital costs of $66,334,227 ($32,827,539 jurisdictional), O&M expenses of $1,234,649 ($1,109,484 jurisdictional), carrying charges of $7,557,070, and a base revenue requirement of negative $746,776. It is further

ORDERED that we approve as reasonable an estimated 2010 true-up amount of $2,379,874 for use in determining the 2011 NCRC recovery amount. The estimated true-up amount is the summation of the following factors: $895,281 under-projection of 2010 O&M expenses, $2,231,369 under-projection of carrying charges, and an over-projection of other adjustments in the amount of $746,776. It is further

ORDERED that we approve as reasonable the following project 2011 costs for Crystal River Unit 3 Uprate project: capital cost of $67,829,699 ($52,297,867 jurisdictional), $481,102 ($423,093 jurisdictional), projected O&M expenses, carrying charges of $10,023,829, and a base revenue requirement of $3,424,764. It is further

ORDERED that we approve as reasonable a projected 2011 amount of $13,871,686 for use in determining the 2011 NCRC recovery amount. It is further

ORDERED that we approve as prudent the following Levy Units 1 & 2 project final 2009 costs: capital costs in the amount of [redacted] ($255,963,530 jurisdictional), O&M expenses of $4,500,975 ($4,020,056 jurisdictional), carrying costs of $36,124,710, and a base revenue requirement of $7,619. It is further

ORDERED that we approve as prudent a final 2009 true-up amount of $4,192,819 for use in determining the 2011 NCRC recovery amount. The final true-up amount is the summation of the following factors: $8,749,309 over-projection of 2009 pre-construction cost, $911,232 over-projection of O&M expenses, $13,845,741 under-projection of carrying costs, and a $7,619 under-projection of other adjustments. It is further

ORDERED that we approve as reasonable the following Levy Units 1 & 2 project 2010 estimated costs: capital costs of [redacted] ($143,951,411 jurisdictional), O&M expenses of $4,211,926 ($3,687,427 jurisdictional), and carrying costs of $50,652,578. It is further

ORDERED that we approve as reasonable an estimated 2010 true-up amount of $8,121,477 for use in determining the 2011 NCRC recovery amount. The estimated true-up amount is the summation of the following factors: $11,835,352 under-projection of 2010 pre-construction costs, $745,625 over-projection of O&M expense, and an over-projection of carrying costs in the amount of $2,968,249. It is further

ORDERED that we approve as reasonable Levy Units 1 & 2 projected 2011 costs in the amount of $75,259,568 for use in determining the 2011 NCRC recovery amount. The approved amount, based on a projected 2011 capital cost [redacted] ($48,464,396 jurisdictional), includes the following items: projected 2011 site selection and pre-construction costs in the amount of $25,056,735, projected O&M expenses of $4,343,901 ($3,823,883 jurisdictional), and carrying costs of $46,378,959. It is further

ORDERED that we approve for PEF a total jurisdictional amount of $163,580,660 for the 2011 NCRC recovery amount. This amount shall be used in establishing PEF's 2011 Capacity Cost Recovery Clause factor. The total 2011 recovery amount includes $60,000,000 amortization of the rate management deferred balance.

By ORDER of the Florida Public Service Commission this 2nd day of February, 2011.

ANN COLE
Commission Clerk

(SEAL)

KY

Chairman Argenziano, dissenting:

Duty to Proceed with Hearing

This Commission is required to hold a full evidentiary hearing in this case given the agency's own rule, its duty to ensure the due process rights of all parties, the specific facts interlocking with the Commission's responsibility to conduct an on-going auditing and monitoring program of nuclear related construction costs and related contracts, and the lack of statutory authority to provide the relief requested in the stipulation.

Section 366.93, Florida Statutes, provides for upfront recovery of nuclear related costs. § 366.93, Fla. Stat. (2010). Rule 25-6.0423, Florida Administrative Code, implements this statute. The rule provides: "The Commission shall, prior to October 1 of each year, conduct a hearing and determine the reasonableness of projected preconstruction expenditures and the prudence of actual pre-construction expenditures expended by the utility . . . ." Fla. Admin. Code R. 25-6.0423(5)(c)2. The rule contemplates a formal Chapter 120 hearing because substantial rights are affected and there are disputed issues of material fact. It would be a denial of due process for the Commission to deny a party a hearing guaranteed by Chapter 120, Florida Statutes. See Fla. Gas Co. v. Hawkins, 372 So. 2d 1118 (Fla. 1979); see also Village Saloon, Inc. v. Div. of Alcoholic Beverages & Tobacco, 463 So. 2d 278, 285 (Fla. 1st DCA 1985) ("a party has an absolute right to a formal hearing under Section 120.57(1) when material facts are in dispute"); Shaker Lakes Apts. Co. v. Dolinger, 714 So. 2d 1040, 1040-41 (Fla. 1st DCA 1998) ("Section 120.57(1), Florida Statutes (Supp. 1996), guarantees all parties the opportunity to present evidence in a full evidentiary hearing."). Yet that is exactly what the Commission did when it aborted the hearing in this case, allowing the recovery of $81 million dollars in nuclear related costs with no opportunity to challenge the reasonableness and prudence of the expenditures. That the Commission has done this pursuant to stipulation with certain *preferred* parties is not a sufficient out.[17] Saddlebrook Resorts, Inc. v. Wiregrass Ranch, Inc., 630 So. 2d 1123, 1126 (Fla. 2d DCA) ("when there is a disputed issue of fact to be determined, Section 120.57 requires a formal proceeding unless waived by *all* parties to the proceeding.") (emphasis in original); see also Peterson v. Dep't of Bus. Regulation, 451 So. 2d 983 (Fla. 1st DCA 1984) (holding a hearing not subject to agency discretion). But cf. South Fla. Hosp. & Healthcare Ass'n v. Jaber, 887 So. 2d 1210 (Fla. 2004) (providing that the Public Service Commission may settle a Section 366.076 limited proceeding, initiated as a matter of agency discretion on the agency's own motion, pursuant to a non-unanimous stipulation, for the appellant, as a non-signatory to the stipulation, was not precluded from petitioning for reduced rates).

The Commission has a duty to conduct an on-going auditing and monitoring program of construction costs and related contracts. See Fla. Admin. Code R. 25-6.0423(5)(c)2. Part of the hearing process for nuclear preconstruction costs is an examination of these findings: the rule aims not only at reviewing materials in preparation for a hearing but also at publicly exploring these findings during annual proceedings. Ideally this process serves as a feedback loop for

[17] The Southern Alliance for Clean Energy (SACE) objected to the stipulation.

continuous improvement: gathering information, critically analyzing the information, and implementing corrective and improvement measures. Aborting the hearing shirks the Commission's duty to candidly and thoroughly review these matters on an annual basis.[18]

The Commission lacks the authority to provide the relief requested in the stipulation. Rule 25-6.0423(5)(c)2., Florida Administrative Code, provides that the Commission shall determine the reasonableness and prudence of a utility's nuclear pre-construction expenditures. If the expenditures are reasonable and prudent, the utility is entitled to recovery; if not, the utility is not entitled to recovery. Recovery is tied to a determination of reasonableness and prudence. The

---

[18] See also Hr'g Tr. vol. 5, 1241, August 26, 2010 (Commission Skop, commenting: "This Commission has . . . the obligation to conduct a thorough annual review of the NCRC project controls and costs. . . . Given the numerous red flags in . . . the audit report and some of the information before us, an open discussion is not only warranted, but required."); Hr'g Tr. 1242 ("No one wants to discuss the numerous red flags we have before us. They just want to wave a wand and make it all go away . . . and don't want to have an open, frank discussion about what happened good and what happened bad and what corrective action is being taken."); Hr'g Tr. 1253 ("[Aborting the hearing] denies me the opportunity to review project controls and redress and get some information that may be germane to moving forward . . . .").

Besides shirking the Commission's duties, I am also concerned with the nonchalance with which the majority violates procedure. In order to obtain a continuance, a rule waiver to dissolve the deadline for nuclear cost recovery proceedings must be procured. See § 120.542, Fla. Stat. (2010); see also Panda Energy Intern. v. Jacobs, 813 So. 2d 46, 51 (Fla. 2002) ("[I]n order to obtain a continuance, Panda had to procure a waiver from the PSC's rule implementing the statutory deadlines for need proceedings."). A proceeding regarding waiver may be consolidated with other proceedings. § 120.542(8), Fla. Stat. But that does not relieve the agency of the duty to comply with notice requirements. See § 120.542(6), Fla. Stat. ("Within 15 days after receipt of a petition for variance or waiver, an agency shall provide notice of the petition . . . . The uniform rules shall provide a means for interested persons to provide comments . . . ."). "Interested persons" is broader than "parties of record." Given the importance and controversy of advanced recovery for nuclear preconstruction costs, the public deserved notice. Second, no formal petition for variance or waiver was filed in this docket. Instead the stipulating parties want the Commission to dispense with the requirements of Section 120.542(5), Florida Statutes, and fill in the blanks in its Motion for Approval of Stipulation. Compare § 120.542(5), Fla. Stat. with FPL's Motion for Approval of Stipulation. The motion does not contain the specificity necessary for the requisite demonstration under Section 120.542(2), Florida Statutes. Compare § 120.542(2), Fla. Stat. ("Variances and waivers shall be granted when the person subject to the rule demonstrates that the purpose of the underlying statute will be or has been achieved by other means . . . [and] application of a rule would create a substantial hardship or violate principles of fairness.") with FPL's Motion for Approval of Stipulation (providing that parties entered the stipulation "to facilitate efficient resolution of issues and to enhance administrative convenience . . . ."). Moreover, no showing was made in hearing to remedy this deficiency. In truth, the requirements of Section 120.542(2), Florida Statutes, were never addressed. (One can search the transcripts in vain for mention of "substantial hardship" and "principles of fairness.") There is no substantial hardship in this case. Deferring the determination of prudence would allow for a more thorough examination of the cause of a $300 million cost increase and the removal of part of FPL's EPU management team. But addressing those matters now, as best we can, is not a hardship; and, if there were insufficient information, the matter could be returned to later. More importantly, however, the $300 million increase in costs and the removal of FPL's EPU management team was percolating far in advance of this case. In fact, as discussed more thoroughly later, perhaps the Commission *should already have been aware* of these issues in last year's proceeding. Thus, there is no hardship, and pretending that there is not only unfairly stretches the concept of waiver (which was never given appropriate attention) but also creates a perverse incentive. Furthermore—and this blends into the concept of "principles of fairness" in Section 120.542(2), Florida Statutes—FPL has not alleged specific facts that distinguish its particular circumstances from those of similarly situated utilities, such as, for instance, PEF, for whom the Commission held a hearing and made a determination without difficulty. Thus the Commission committed error in its handling of an implied rule waiver, and the Commission lacks competent, substantial evidence to support its decision to waive Rule 25-6.0423, Florida Administrative Code.

Commission is not authorized to sever recovery from a determination of reasonableness and prudence. The Commission has done this by substituting a placeholder (deferral subject to refund) for a true determination in order to permit immediate recovery. If the Commission's determination of reasonableness and prudence were a true determination there would be competent, substantial evidence to support the determination (which there isn't), and there would be no need to settle the matter in a subsequent proceeding (which there is). The majority's construction of the relevant rule replaces its requirements by cheap sleight of hand.

Next, even assuming the Commission was authorized to use a faux determination to reach a desired ad hoc result, the Commission lacks the authority to approve recovery subject to refund in these circumstances. An agency can only do what it is authorized to do by the Legislature. Ocampo v. Dep't of Health, 806 So. 2d 633, 634 (Fla. 1st DCA 2002); accord Globe Sec. v. Pringle, 559 So. 2d 720, 722 (Fla. 1st DCA 1990) (stating that "[w]orkers' compensation is a creature of statute and, therefore, must be governed by what the statute provides, not by what we may feel the law should be" and "[t]here is simply no provision in Chapter 440 for extending compensation benefits . . . and we would be impermissibly invading the legislative prerogative were we to construe Chapter 440 to so provide."). There is no statutory provision authorizing the Commission to allow recovery subject to refund in this circumstance; in fact, in the normal course of business a determination of reasonableness and prudence is a prerequisite to recovery. The only instance where this agency is authorized to bypass a Chapter 120 hearing and allow recovery prior to giving a substantially-affected party the opportunity to contest the matters involved is under the "file-and-suspend" statute. See §§ 366.06(3), 366.071(1), Fla. Stat. (2010); Fla. Interconnect Telephone Co. v. Fla. Pub. Serv. Comm'n, 342 So. 2d 811 (Fla. 1977) (determining that procedure under "file-and-suspend" law under which, if the Public Service Commission does not object to proposed tariff changes within 30 days, the proposed rates automatically go into effect survives adoption of the new Administrative Procedure Act); see also Citizens of Fla. v. Wilson, 567 So. 2d 889 (Fla. 1990) (providing that pursuant to the file-and-suspend law the Office of Public Counsel was not entitled to a hearing before interim rates went into effect: statute predating APA allowed rates to become effective on an interim basis without a hearing when the Commission took no action within 60 days of filing; however, the Commission is obligated to afford interested parties a hearing before rates are finalized pursuant to final order); Citizens of Fla. v. Wilson, 568 So. 2d 904 (Fla. 1990) (same). The file-and-suspend statute allowing recovery through interim rates is not relevant to the recovery of nuclear preconstruction costs. Section 366.071, Florida Statutes, which provides the procedure for interim rates, makes this obvious: "To establish a prima facie entitlement for interim relief, the commission, the petitioning party, or the public utility shall demonstrate that the public utility is earning outside the range of reasonableness on rate of return calculated in accordance with subsection (5)." § 366.071(1), Fla. Stat. (2010); see also § 366.071(5), Fla. Stat. (2010). Here there was no prima facie showing. Indeed, interim rate relief was never discussed in the aborted proceeding. An examination of Rule 25-6.0423, Florida Administrative Code, also reveals that interim rates and its case law progeny are inapplicable to this situation: the only law implemented by the rule is Section 366.93, Florida Statutes; there is no reference to interim rates

or Section 366.071, Florida Statutes. Fla. Admin. Code R. 25-6.0423.[19] In addition, the reason the Commission can bypass a Chapter 120 hearing and allow recovery subject to refund in the case of interim rates is that the file-and-suspend statute predated and survived the adoption of Chapter 120. See Citizens of Fla. v. Wilson, 568 So. 2d 904, 905 (Fla. 1990) ("As the Florida Supreme Court stated in the Florida Interconnect case, the "file-and-suspend" statute, Section 364.05(4), Florida Statutes, survived the adoption of the Administrative Procedure Act which is Chapter 120, Florida Statutes. OPC cited Chapter 120 as its authority for its right to a hearing prior to these rates going into effect."). By contrast here the relevant statute is post-APA: Section 366.93, Florida Statutes, was passed in 2006; therefore, parties' rights pursuant to this statute are covered by Chapter 120, which entitles substantially affected parties to a hearing prior to rates going into effect. Thus for the above reasons arguments to broadly construe Citizens of Florida v. Wilson are woefully disingenuous.[20] Very simply, the Commission cannot give parties something it is not authorized to give them. The Commission has no authority to allow recovery subject to refund without hearing on this matter. There can either be a full evidentiary hearing accompanied by a determination of reasonableness and prudence (which would permit recovery), or the full evidentiary hearing and the determination of reasonableness and prudence can be deferred—with the attached recovery also deferred. In this instance the agency is not authorized to give a utility its money now and its regulation later.

For the foregoing reasons the majority's decision to accept the stipulation and incorporate it by order is not in accordance with law.

Distinguishable from Case Law

This case is distinguishable from South Florida Hospital and Healthcare Association v. Jaber, 887 So. 2d 1210 (Fla. 2004).

Section 366.076(1), Florida Statutes, provides the Commission with the discretion to open a limited proceeding to act upon any matter within its jurisdiction. § 366.076(1), Fla. Stat. In South Florida Hospital the Public Service Commission initiated a limited proceeding on its own motion pursuant to Section 366.076(1), Florida Statutes (2002), to consider the effects of a planned formation of a regional transmission organization and FPL's planned merger with Entergy Corporation. In addition, the Commission was concerned about the possibility of "regulatory changes": the then Governor had formed a commission to evaluate the future of electric service in Florida, and legislation proposing deregulation of retail electric providers had surfaced. Thus, partly due to specific and limited factual circumstances (which never materialized as the merger between FPL and Entergy failed) and partly in an attempt to justify its own existence and create a perception of usefulness, the Commission initiated a very limited

[19] And the purpose of the file-and-suspend law—"to reduce the so-called 'regulatory lag' inherent in full rate proceedings," Citizens of Fla. v. Wilson, 568 So. 2d 904, 905 (Fla. 1990)—does not apply to nuclear cost recovery hearings that are held annually and are far narrower in scope than a rate case; and to the extent it does, the resolution of the matter is encapsulated in the governing rule.

[20] See generally FPL's Revised Motion for Approval of Stipulation and Deferral of Consideration of Issues at 4 (stating that "[t]he Florida Supreme Court has affirmed the Commission's authority to adjust an electric utility's rates subject to refund without hearing" and citing Citizens of Fla. v. Wilson, 568 So. 2d 904 (Fla. 1990)).

proceeding on its own motion. From the beginning the Commission made clear it did not see the matter progressing to a full hearing; in fact, initially a hearing was not even scheduled in the docket. Then, when the Commission tentatively scheduled a hearing, it declared that "[the] proceeding was initiated by the Commission on its own motion. As such, if, at any point, staff believes that the proceeding should be concluded, it can prepare a recommendation for Commission consideration." Order No. PSC-01-2111-PCO-EI at 8, dated October 24, 2001. And the hearing was limited in that it did not provide for full cross-examination of witnesses.[21] The Commission also took the unusual step of holding noticed settlement discussions with all parties. This happened once on January 7, 2002, and again on January 14, 2002. In short, the proceeding was meant to satisfy unstated aims and the Commission did everything it could to achieve a settlement in a docket it tightly controlled pursuant to a procedural framework wherein the Commission was in effect acting as both petitioner and arbiter.

This case is quite different. In 2006 the Florida legislature passed Section 366.93, Florida Statutes—providing for upfront recovery for the cost of siting, design, licensing, and construction of nuclear power plants. Pursuant to Section 366.93(3), Florida Statutes, "a utility may petition the commission for cost recovery as permitted by this section and commission rules." § 366.93(3), Fla. Stat. (2010) (emphasis added). Thus, as envisioned by the governing statute, and unlike South Florida Hospital, the instant case was not initiated as a matter of agency discretion. Rule 25-6.0423(5)(c)2., Florida Administrative Code, makes this plain: "The Commission shall, prior to October 1 of each year, conduct a hearing and determine the reasonableness of projected pre-construction expenditures and the prudence of actual pre-construction expenditures expended by the utility . . . ." Fla. Admin. Code R. 25-6.0423(5)(c)2. And unlike South Florida Hospital, here the Commission made clear it intended to hold a full hearing. The Notice of Commission Hearing issued on August 10, 2010 laid out the dates for the public hearing; that the Commission held jurisdiction pursuant to Section 366.93, Florida Statutes; that the hearing would be governed by Chapter 120, Florida Statutes, and Rule 25-6.0423, Florida Administrative Code; that at the hearing all parties would be given the opportunity to be heard and to present testimony and other evidence on the issues; and that all witnesses shall be subject to cross-examination. Compare Citizens of Fla. v. Mayo, 333 So. 2d 1, 7 (Fla. 1976) (stating that where the Commission chose to conduct public hearings by publishing notices in which it promised intervenors the right to present evidence and to cross-examine witnesses, "the Commission should have . . . provided the full due process rights which its hearing notices promised."). Indeed, the Commission held a full hearing as it pertained to PEF's portion of this docket, and by unanimous vote decided to hold a full hearing for FPL's as well.[22]

South Florida Hospital is also distinguishable because there the appellant, as a non-signatory to the settlement agreement, could not be precluded from challenging the substance of the stipulation by petitioning for a greater rate reduction. 887 So. 2d at 1214. This case is different. Here an intervening party has been denied a hearing and no satisfactory alternate

[21] See Order No. PSC-02-0102-PCO-EI, issued January 16, 2002 (describing how FPL witnesses were not expected to put on an affirmative case but need only be offered to sponsor the company's MFRs).

[22] Three commissioners subsequently changed their mind regarding holding a hearing in this case, even though no facts or circumstances changed since the preceding vote.

remedy is available. That is, here SACE, a non-signatory to the stipulation, has been denied an opportunity to challenge the substance of the stipulation—allowing advance recovery with a hearing to come. *SACE has no way to challenge the stipulation providing that it must pay in advance and wait.* Thus here a non-signatory to a stipulation *has been precluded* from challenging the substance of a stipulation. Further, unlike in South Florida Hospital where there was no immediate harm as the appellant was an unsatisfied beneficiary of a $250 million annual rate reduction, here $31 million dollars (net) has been passed through to ratepayers with no opportunity to challenge the reasonableness and prudence of $81 million in nuclear related costs as the hearing that ought to be held annually has been aborted. Consumers will begin to pay these increased costs in January 2011. In summary, in South Florida Hospital a non-signatory was not precluded from challenging the substance of a stipulation, and there was no harm; here a non-signatory has been precluded, and there is harm.

It is also significant that in the administrative proceeding at issue in South Florida Hospital the Commission unanimously voted to approve the stipulation. In this case there was a narrow 3 to 2 decision.[23] Yet it is not simply the margin of decision that is important: what matters more is how the voting pattern reveals the Commission's comfort with the quantity and quality of information provided as the basis of decision. In fact, in South Florida Hospital three Commissioners voiced a belief that a thorough review had been done and that all the necessary information was supplied (and the two Commissioners silent on the point arguably signaled agreement through their votes). This case is different. Here two dissenting Commissioners expressed concern that aborting the proceeding would be a dereliction of duty and deprive a party of due process.[24] Also, the dissenting commissioners expressed concern that the information relied upon was insufficient, lacking, or in need of further development to establish veracity. The fact that the dissenters were left with unanswered questions indicates an unwelcome development in the spirit of public debate at this Commission. Unlike in South Florida Hospital, where the majority did not proceed until all commissioners felt comfortable with the factual basis upon which they accepted the stipulation (and through which commissioners verified the stipulation's reasonableness as a resolution of the case), here three commissioners ended the hearing abruptly, failing to allow the dissenters the opportunity to acquire the knowledge they felt necessary in order to accept the stipulation—the knowledge that a thorough review had been done and all necessary information had been brought to bear.[25]

---

[23] After this case was resolved pursuant to Commission vote, FPL filed a motion for recusal against Commissioner Skop in the First District Court of Appeal.

[24] E.g., Hr'g Tr. vol. 5, 1299-1300, August 26, 2010 (Commissioner Skop, stating: "The Commission has its duty and obligation to perform an annual review. . . . We should be doing it for FPL, given the information known to the Commission, and to do otherwise is a dereliction of duty."); Hr'g Tr. 1300 (Chairman Argenziano, stating: "I . . . believe that having the opportunity to have . . . serious concerns addressed is due process to the parties . . . .").

[25] See also Hr'g Tr. vol. 5, 1302, August 26, 2010 (Chairman Argenziano, reasoning: "If we come up with we're unbalanced after . . . staff asks their questions and there are still questions, I think the bigger issue for me is then are we even for one Commissioner going to say that the other questions you might have is subject really to us saying no. And that's our prerogative. That's your prerogative. But I don't feel like saying that to any Commissioner, and I don't think it's justified. And I may have questions that I really think need to be answered."); Hr'g Tr. 1253 (OPC stating: "we've always understood that asking questions is an individual Commissioner's prerogative."). This ability to ask questions is crucial because an agency head serves as "investigator . . . and adjudicator . . . ." Bay Bank & Trust Co. v. Lewis, 634 So. 2d 672, 679 (Fla. 1st DCA 1994).

Furthermore, if two commissioners have more questions to ask and need more information before they feel comfortable accepting a stipulation, that suggests—at least in the mind of two commissioners, ultimate fact-finders in the case—that there may be a lack competent, substantial evidence to support the decision.

In sum, this case is distinguishable from South Florida Hospital and Healthcare Association v. Jaber, 887 So. 2d 1210 (Fla. 2004). The instant case was not set in motion of the Commission's own volition; this is not like South Florida Hospital where the Commission was, in effect, the petitioning party. And in this case it was very clear that a full evidentiary hearing was envisioned. In South Florida Hospital no hearing was initially scheduled; then the Commission strongly hinted in its MFR Order that it intended to resolve the matter through a settlement; and later, leading up to the hearing, the Commission took the unusual step of scheduling noticed meetings to explore settlement. Further, in South Florida Hospital the appellant benefitted from the resolution of the underlying case while still retaining an alternate path to challenge the matters covered by the stipulation; in this case an intervening party has suffered an injury of increased costs and denial of due process through inability to contest the reasonableness and prudence of nuclear-related expenses while having paths to satisfactory remedies slammed shut. And in the administrative proceeding at issue in South Florida Hospital there was unanimous agreement that a thorough review had been performed; here a three commissioner majority silenced dissenting commissioners—leaving unanswered questions and lingering concerns. For the foregoing reasons South Florida Hospital and Healthcare Association v. Jaber, 887 So. 2d 1210 (Fla. 2004) does not support the Commission's action in this case.

Silent Reason for the Commission's Decision

The Commission presides over a variety of cases. Yet for the most part players in the recurring game stay the same. Thus is it not unusual that parties may be willing to compromise or trade results across dockets in order to satisfy their varied aims. This case is perhaps best explained as a result of such a silent reason—a gentleman's agreement amongst the parties to resolve this case for something unknown to the Commission. I am not surprised that this happens. Nor am I fervently opposed to such a practice because usually this trading results in fair results on balance (in terms of the process as a whole). Yet there are cases where such trading results in an unfair or improper end in terms of a specific case as a standalone matter. This is one of those cases.

Stipulations are contingent upon approval by the Commission. The terms of stipulations are scrutinized by staff and by Commissioners. This scrutiny exposes the bargaining and compromise of parties to criticism. And given that Commissioners have an independent view of the facts and underlying issues, the more said in stipulations—and the more unrelated matters (other cases) included for their negotiation value—the greater both the exposure to and potential vehemence of criticism, which could hurt the chances for Commission approval. So it is not always in a party's interest to lay out the exact terms of a stipulation, and parties may omit elements from a stipulation in order to avoid criticism or prevent disclosure of its full terms. Leaving out elements may have enforcement risks (*e.g.*, a party may recant and pursue a

different course of action in a separate, unmentioned docket than previously agreed to). But as parties to Commission cases are repeat players, such a one-time gain would be minimal compared to the long-term difficulties engendered.

I believe the decision by parties to accept a deferral subject to refund through stipulation—an end-run around the requirements of the Commission's administrative rule—was an unstated term of the stipulation proposed in FPL's rate case. The timing of the stipulations and preceding negotiations overlap very closely. The stipulation in this docket was filed on August 17, 2010, and the stipulation in Docket No. 080677-EI was filed on August 20, 2010—the day of the prehearing officer's confidentiality hearing for this case. Also, the signatories and non-signatories to the two stipulations are revealing: FPL, FIPUG, and OPC are signatories to both of the proposed stipulations; SACE is not a signatory to either (and was not a participant in the rate case). Further, there is little apparent explanation for OPC's action in this case outside of the stipulation being an unstated part of the settlement in the rate case.[26] The fact that SACE and OPC have similar goals in minimizing ratepayer impact, and SACE sought to proceed to a full evidentiary hearing and determination of reasonableness and prudence, rather than allowing upfront recovery of money from ratepayers before even litigating the issue, suggests that OPC may have strayed from its usual course in this case.[27]

SACE should not be deprived of its due process rights—to a full Chapter 120 hearing and determination of the reasonable and prudence of FPL's nuclear preconstruction costs prior to recovery—because other parties have agreed to a stipulation. SACE has its own interests that are

---

[26] See Mary Ellen Klas, Public Service Commission calls on FPL chief to appear, MIAMI HERALD, Aug. 25, 2010, available at http://www.miamiherald.com/2010/08/25/1790837/psc-calls-on-fpl-chief-to-appear.html ("Public Counsel JR Kelly said he supported the delay in the decision because the Florida Legislature has already authorized Progress Energy and Florida Power & Light to take hundreds of millions from electricity customers so they would start the lengthy process of planning for the nuclear plants."). However, a dissenting Commissioner did allude to an alternative explanation. Hr'g Tr. vol. 5, 1241, August 26, 2010 (Commissioner Skop, stating: "I'm not sure why [] Public Counsel . . . entered into the stipulation. Maybe it's fear out of . . . retaliation from the legislature."). See also Mary Ellen Klas, Public Service Commission calls on FPL chief to appear, MIAMI HERALD, Aug. 25, 2010, available at http://www.miamiherald.com/2010/08/25/1790837/psc-calls-on-fpl-chief-to-appear.html ("Kelly acknowledged that the timing of the delay may have political implications. He was targeted by utilities earlier this year when they urged legislators to force him to reapply for his job after his office successfully argued that the PSC should reject rate increase requests sought by both FPL and Progress Energy."). See generally Mary Ellen Klas, Utilities' public advocate faces competition for post, MIAMI HERALD, Jan. 12, 2010, available at http://www.miamiherald.com/2010/01/12/1420146/utilities-public-advocate-faces.html (describing how legislative leaders decided to take new applicants for the position of Public Counsel).

[27] It is also unclear whether the Office of Public Counsel knew of FPL's withdrawal of its LAR for St. Lucie 2 prior to agreeing to the stipulation. See Hr'g Tr. vol. 5, 1250-51, August 26, 2010 (OPC's lead counsel stating that "[he] personally became aware [of the LAR withdrawal] when [he] saw it on the website when FPL filed it" and that "[t]he chronology is such that the stipulation happened and then we learned of the letter."). After much debate as to whether this undermined the stipulation, OPC rekindled its memory: "during the break J.R. reminded me that FPL did by telephone inform our office of FPL's decision to withdraw its LAR for the project . . . which would have been prior to the finalization of the stipulation." Hr'g Tr. vol. 5, 1306, August 26, 2010. Interestingly, OPC must have received this telephone call at least six days before the Commission placed the NRC letter acknowledging FPL's LAR withdrawal in the record and FPL filed its official one-paragraph letter informing the Commission and parties to the proceeding of its LAR withdrawal.

not adequately represented by other parties to the stipulation.[28] And although Public Counsel may have a special status that makes its participation in a stipulation important,[29] this special position is not so elevated as to allow it to disassemble the due process rights of other parties. That is, OPC should treat other parties with the same respect it would like to receive. Perhaps, for example, OPC might not like it if it was precluded from a hearing and forced to pay upfront monies today because of an agreement between SACE and FPL. And perhaps OPC might find that effrontery even more egregious if done as a result of a stipulation between SACE and FPL on a completely unrelated matter—for instance, a resolution of the demand side management case, Docket No. 100155 (a case with important policy issues and significant potential rate impact), where FPL, SACE, and FIPUG are all parties, but OPC is not.

This case demonstrates the difficulties in accepting stipulations entered into only by certain *preferred* parties when all parties have significant interests, and that parties, as repeat players in a regulatory game, should be careful to limit their trading across dockets so as not to violate the due process rights and reciprocal duty of fairness to other parties. These findings further support my view that a full hearing was required in this case.

An Unresolved Matter

FPL's case was marred by a number of unfortunate events. One of these was a specific finding in the Concentric Report that was well summarized in Staff's Audit Report:

> The Concentric investigation also examined the 2009 Nuclear Cost Recovery Clause proceedings to evaluate whether information provided to the FPSC during the proceedings was "accurate and consistent with the standards expected for testimony before, and submissions made to, a regulatory agency". Concentric identified that budget estimate information provided by the Vice President Uprates in his May 2009 testimony had changed and the change was not discussed in the hearing. Concentric stated in its report that:
>
> While Concentric agrees that the new analyses confirmed the conclusions in Mr. ____ testimony, we believe that a $300 million, or 27%, increase in the projected cost of the EPU Project should have been discussed in the live testimony on September 8, 2009.

[28] The Southern Alliance for Clean Energy (SACE) is a party to this case. SACE is a non-profit organization that promotes responsible energy choices that solve global warming problems and ensure clean, safe and healthy communities throughout the Southeast, including in the State of Florida. SACE has a substantial membership base in Florida. This membership has its own view on nuclear energy production and its costs.

[29] The Public Counsel is supposed to represent the citizens of the State of Florida. Citizens of Fla. v. Mayo, 333 So. 2d 1, 6 (Fla. 1976) (describing purpose of Public Counsel to represent the citizens of the state).

> In an interview with Concentric, FPSC audit staff determined that FPL witnesses are prepared by their attorneys for potential questions that might be asked during the hearing, as most witnesses are. During the interview, Concentric agreed that Mr. ____ had participated in a line-by-line budget discussion with FPL's Executive Steering Committee in July 2009, and therefore, understood that the budget information provided in May 2009 was indeed incorrect by the time of the hearing on September 8, 2009. Yet, when asked by FPL attorney Anderson, "If I asked you the same questions contained in your prefiled direct testimony, would your answers be the same?" Mr. ____ answered "Yes, they would be".
>
> FPSC audit staff and Concentric agree that Mr. ____ knew the budget estimate was being reviewed and likely would change. In fact, Concentric states in the _____ investigation report:
>
> On September 9, 2009, the ESC was presented with a newly revised forecast that further increased the cost [of] the EPU Projects by approximately $104 million total for both sites. This presentation stated that approximately 30% of the total project costs have "high certainty".

(Audit Staff's July 2010 Review of Florida Power & Light Company's Project Management Internal Controls for Nuclear Plant Uprate and Construction Projects at 41-42.)

An inference can be drawn from these facts.[30]

This may not be an issue that can be perfectly addressed by the Commission, and discussion may be uncomfortable. But I cannot feign complete belief in non-occurrence, assured without doubt that nothing ever happened. The presence of the matter within the Concentric Report and Staff's Audit Report indicates a separate possibility.[31] Nor can I eliminate the prospect that this issue may have been an added factor in favor of agreement to the stipulation, both by the parties and by the Commission.

---

[30] See generally Hr'g Tr. vol. 7, 1555-1560, August 27, 2010 (Witness Reed agreeing that testimony provided to the Commission was "inaccurate"; was no longer the best information available to the tune of $300 million dollars (a 27% change); and that if in the position of the sworn witness "[he] would have chosen to answer differently and provide the updated information.").

[31] And as an intervenor in this case noted, a very serious one. See Hr'g Tr. vol. 7, 1561, August 27, 2010 (Mr. Moyle confirming from witness Reed that "this is an important conversation to have" because "in order for regulators to do their jobs and for companies to be regulated, you have to have true, accurate and complete information provided to a tribunal . . . and to intervenors . . . ."); see also Hr'g Tr. 1562 (confirming that "regulators are entitled to accurate, correct, truthful and complete information" in order to "do their job" and that "material" information involving a $300 million, 27% change in the overall cost of the nuclear uprate project was at issue).

I do not know what best be done. But I issued the subpoenas for Messrs. Olivera, Kundalkar, and Anderson to try to ascertain the truth of a relevant matter.[32]

We will see if the Commission takes up this search for truth in next year's proceeding.

DISSENT BY: COMMISSIONER SKOP

COMMISSIONER SKOP, dissenting with a separate opinion:

I respectfully dissent from the majority decision to approve $81,317,333 in cost recovery for the projected 2011 EPU related costs from FPL ratepayers without a conducting a full evidentiary hearing. Numerous red flags within the staff audit report and the Concentric report warranted such a hearing to evaluate the adequacy of FPL project controls for the EPU project consistent with performing the Commission's regulatory oversight function. Additionally, the majority decision to approve $81,317,333 in cost recovery for the projected 2011 EPU related costs, without first making a determination that such costs were "reasonable", completely ignores and is inconsistent with the requirements of Rule 25-6.0423(5)(c)(2), F.A.C.

Furthermore, given the numerous red flags within the staff audit report and the Concentric report, I further dissent on the basis that the majority approval of the proposed stipulation, prior conducting a hearing, effectively denied me the opportunity to ask questions regarding the veracity of FPL witness statements made under oath to the Florida Public Service Commission, as well as, the accuracy and timeliness of information which FPL provided to the Commission with respect to the Nuclear Cost Recovery Clause (NCRC) proceedings. In this regard, it is important to note that the Commission initially voted unanimously (5-0) to conduct a full evidentiary hearing, but the majority (Commissioners Graham, Edgar, Brisé) abruptly reversed course and subsequently voted 3-2 (Chairman Argenziano and Commissioner Skop dissenting) not to conduct a full evidentiary hearing prior to approving the proposed stipulation.

---

[32] Mr. Anderson was subpoenaed to preserve the Commission's fact-finding options should Mr. Kundalkar have been unavailable or otherwise unable to answer questions. Should that have occurred, it may have been necessary to hold an evidentiary hearing to determine whether the crime-fraud exception to the attorney-client privilege applied. See BNP Paribas v. Wynne, 967 So. 2d 1065 (Fla. 4th DCA 2007); see also Nix v. Whiteside, 475 U.S. 157, 106 (1986) (stating that the Model Code of Professional Responsibility and the Model Rules of Professional Conduct "do not merely *authorize* disclosure by counsel of client perjury; they *require* such disclosure" and that the "special duty of an attorney to prevent and disclose frauds upon the court derives from the recognition that perjury is as much a crime as tampering with witnesses or jurors by way of promises and threats, and undermines the administration of justice."). On an unrelated note, Mr. Bryan Sanfred Anderson appears to have had some difficulty accurately conveying the reasons for the stipulation. See Hr'g Tr. vol. 5, 1287-88, August 26, 2010 (Mr. Davis, stating: "SACE was asked to stipulate to this stipulation at, on Monday the 16th is when we first heard about it. And the way it was represented to us is that staff had requested a deferral and that OPC had already agreed." Mr. Young, stating: "Mr. Davis represented that staff had requested a deferral, staff audit in their testimony requested that the Commission either defer or open a separate docket as relates to what he's talking about. So I just wanted to make sure that we're clear that staff did not -- I think if -- I think he said FPL stated that staff requested a deferral. That was not the case." Mr. Davis, responding: "And that's exactly what I stated. That was the way Mr. Anderson represented it to us.").

In closing, it is extremely disappointing and absolutely shameful that the majority, in approving the proposed stipulation, would vote to allow the cost recovery of $81,317,333 in projected 2011 EPU related costs from FPL ratepayers without first conducting a full evidentiary hearing. The staff audit report and the Concentric report clearly warranted such a hearing to evaluate the adequacy of FPL project controls for the EPU project consistent with performing the Commission's regulatory oversight function. Unfortunately, for FPL ratepayers, even the most grossly obvious facts can be seemingly ignored by the majority when they are unwelcome.

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.

Any party adversely affected by the Commission's final action in this matter may request: 1) reconsideration of the decision by filing a motion for reconsideration with the Office of Commission Clerk, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, within fifteen (15) days of the issuance of this order in the form prescribed by Rule 25-22.060, 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 and/or wastewater utility by filing a notice of appeal with the Office of Commission Clerk, and filing a copy of the notice of appeal and the filing fee with the appropriate court. This filing must be completed within thirty (30) days after the issuance of this order, pursuant to Rule 9.110, Florida Rules of Appellate Procedure. The notice of appeal must be in the form specified in Rule 9.900(a), Florida Rules of Appellate Procedure.

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In Re: Nuclear Power Plant Cost Recovery Clause	Docket No. 100009-EI Filed: August 17, 2010

FLORIDA POWER & LIGHT COMPANY'S MOTION FOR APPROVAL OF STIPULATION AND FOR DEFERRAL OF CONSIDERATION OF ISSUES

Florida Power & Light Company ("FPL") hereby moves the Florida Public Service Commission (the "Commission") to approve the Stipulation dated August 17, 2010, attached hereto, which the Parties thereto have entered into in order to facilitate efficient resolution of issues and to enhance administrative convenience, and moves the Commission to defer consideration of Issue 3B to the 2011 Nuclear Cost Recovery cycle. The Office of Public Counsel ("OPC"), the Southern Alliance for Clean Energy ("SACE"), and the Florida Industrial Power Users Group ("FIPUG") (collectively with FPL the "Parties") have entered into the Stipulation or taken a position of no objection to the relief requested herein, as set forth in the attached Stipulation. In support of this Motion FPL states as follows:

1. The Parties have engaged in negotiations for the purpose of reaching a comprehensive stipulation to defer consideration of the issues pertaining solely to FPL in this docket until the 2011 nuclear cost recovery cycle, and for approval of collection of FPL's requested NCRC amount with the agreement that such collection is preliminary in nature and that those amounts are subject to refund in the form of a true-up based on the outcome of the deferred consideration.

2. These negotiations have culminated in the attached Stipulation, which addresses all FPL-only issues. With respect to Issue 3B, FPL requests that this issue also be deferred for consideration with all other FPL issues to the 2011 Nuclear Cost Recovery cycle, and none of the Parties object to such request. FPL requests that following the Commission's review of this

Motion and the Stipulation, that the Commission grant the Motion and approve the Stipulation at the beginning of its scheduled nuclear cost recovery clause hearings scheduled for August 24-27, 2010, as well as grant FPL's request to defer Issue 3B along with the other FPL issues. FPL is authorized to represent that FIPUG supports this motion, OPC supports and/or does not object to this Motion as set forth in the Stipulation, and that SACE has no objection. Progress takes no position on this Motion. FPL was unable to reach PCS Phosphate for their positions on this Motion. FPL was unable to reach the Federal Executive Agencies ("FEA") to ascertain its position with respect to the Stipulation or this Motion.

WHEREFORE, FPL respectfully request that the Commission approve the Stipulation

Respectfully submitted this 17th day of August, 2010.

Bryan S. Anderson
Fla. Auth. House Counsel No. 219511
Mitchell S. Ross
Fla. Bar No. 108146
Jessica A. Cano
Fla. Bar No. 0037372
Attorneys for Florida Power & Light Company
700 Universe Boulevard
Juno Beach, Florida 33408-0420
(561) 304-5226
(561) 691-7135 (fax)

By: *s/ Bryan S. Anderson*
Bryan S. Anderson
Fla. Authorized House Counsel No. 219511

CERTIFICATE OF SERVICE
DOCKET NO. 100009-EI

I HEREBY CERTIFY that a true and correct copy of FPL's Motion for Approval of Stipulation and for Deferral of Consideration of Issues was served electronically this 17th day of August, 2010 to the following:

Anna Williams, Esq.
Lisa Bennett, Esq.
Keino Young, Esq.
Division of Legal Services
Florida Public Service Commission
2540 Shumard Oak Blvd.
Tallahassee, Florida 32399-0850
LBENNETT@PSC.STATE.FL.US
KYOUNG@PSC.STATE.FL.US
ANWILLIA@PSC.STATE.FL.US

J. R. Kelly, Esq.
Charles Rehwinkel, Esq.
Joseph McGlothlin
Office of Public Counsel
c/o The Florida Legislature
111 West Madison Street, Room 812
Tallahassee, Florida 32399
mcglothlin.joseph@leg.state.fl.us
Kelly.jr@leg.state.fl.us
Rehwinkel.Charles@leg.state.fl.us

J. Michael Walls, Esq.
Blaise Huhta, Esq.
Carlton Fields Law Firm
P.O. Box 3239
Tampa, Florida 33601-3239
mwalls@carltonfields.com
bhuhta@carltonfields.com
Attorneys for Progress

Dianne M. Triplett, Esq.
Progress Energy Florida
229 1st Avenue N PEF-152
St. Petersburg, Florida 33701
dianne.triplett@pgnmail.com
Attorney for Progress

Jon C. Moyle, Jr., Esq.
Vicki Gordon Kaufman, Esq.
Keefe Anchors Gordon & Moyle, PA
118 North Gadsden Street
Tallahassee, Florida 32301
vkaufman@kagmlaw.com
jmoyle@kagmlaw.com
Attorneys for FIPUG

John W. McWhirter, Jr., Esq.
Davidson McWhirter, P.A.
PO Box 3350
Tampa, Florida 33601
jmcwhirter@mac-law.com
Attorney for FIPUG

R. Alexander Glenn, Esq.
John T. Burnett, Esq.
Progress Energy Service Company, LLC
P.O. Box 14042
St. Petersburg, Florida 33733-4042
john.burnett@pgnmail.com
alex.glenn@pgnmail.com
Attorneys for Progress

James W. Brew, Esq.
F. Alvin Taylor, Esq.
Brickfield, Burchette, Ritts & Stone, P.C.
1025 Thomas Jefferson Street, NW
Eighth Floor, West Tower
Washington, DC 20007-5201
jbrew@bbrslaw.com
ataylor@bbrslaw.com
Attorneys for PCS Phosphate

Randy B. Miller
White Springs Agricultural Chemicals, Inc.
Post Office Box 300
15843 Southeast 78th Street
White Springs, Florida 32096
RMiller@pcsphosphate.com

Mr. Paul Lewis, Jr.
106 East College Ave., Suite 800
Tallahassee, Florida 32301-7740
paul.lewisjr@pgnmail.com

Captain Shayla L. McNeill
Air Force Legal Operations Agency (AFLOA)
Utility Litigation Field Support Center (ULFSC)
139 Barnes Drive, Suite 1
Tyndall AFB, FL 32403-5319
shayla.mcneill@tyndall.af.mil

Gary A. Davis, Esq.
James S. Whitlock, Esq.
Gary A. Davis & Associates
P.O. Box 649
Hot Springs, NC 28743
Gadavis@enviroattorney.com
jwhitlock@enviroattorney.com
Attorneys for SACE

By: *s/ Bryan S. Anderson*
Bryan S. Anderson
Fla. Authorized House Counsel No. 219511

August 17, 2010

Docket No. 100009-EI
Proposed Stipulations of Issues

In order to facilitate efficient resolution of issues, and to enhance administrative convenience, Florida Power & Light Company ("FPL") offers the following proposed stipulations. Issue number references are made with respect those set forth in Staff's final issues list and pre-hearing statement, as amended at the August 11 prehearing conference. The proposed stipulations pertain only to FPL issues.

Confidentiality hearing continuance/deferral stipulation:

Proposed Stipulation: FPL intends to file a motion not later than August 16, 2010 to defer or for continuance of the August 20 confidentiality hearing. OPC agrees that FPL can state in its motion that it is authorized to represent that OPC's position on the motion is that if the Commission defers the issues to which FPL and OPC have stipulated to the 2011 hearing cycle, then OPC agrees to a reasonable deferral or continuance of the hearing on FPL's requests for confidential classification now scheduled for August 20, and believes that deferring the hearing on confidentiality claims from August 20 to the next practicable hearing date would provide parties a more adequate ability to prepare. Southern Alliance for Clean Energy ("SACE") agrees that FPL can state in its motion that its position is the same as OPC's with respect to FPL's motion for deferral or continuance of the hearing on FPL's requests for confidential classification. The Florida Industrial Power Users Group ("FIPUG") does not object to continuance or deferral of the confidentiality hearing.

PROPOSED STIPULATIONS BY ISSUE

ISSUE 1: Do FPL's activities related to Turkey Point Units 6 & 7 qualify as "siting, design, licensing, and construction" of a nuclear power plant as contemplated by Section 366.93, F.S.?

Proposed Stipulation:

FPL, OPC and FIPUG stipulate, and SACE does not object, to the deferral of this issue until the 2011 nuclear cost recovery cycle.

ISSUE 3B: Should any FPL rate case type expense associated with the 2010 NCRC hearing for FPL be removed?

Proposed Stipulation: FPL will request deferral of this issue until the 2011 nuclear cost recovery cycle, OPC authorizes FPL to represent in its request that OPC does not object to deferral of this issue, and SACE and FIPUG do not object.

*****

ISSUE 16: **Should the Commission find that for the year 2009, FPL's accounting and costs oversight controls were reasonable and prudent for the Turkey Point Units 6 & 7 project and the Extended Power Uprate project?**

Proposed Stipulation: FPL, OPC and FIPUG stipulate, and SACE does not object, to the deferral of this issue until the 2011 nuclear cost recovery cycle.

ISSUE 17: **Should the Commission find that for the year 2009, FPL's project management, contracting, and oversight controls were reasonable and prudent for the Turkey Point Units 6 & 7 project and the Extended Power Uprate project?**

Proposed Stipulation: FPL, OPC and FIPUG stipulate, and SACE does not object, to the deferral of this issue until the 2011 nuclear cost recovery cycle.

ISSUE 18: **Should the Commission approve what FPL has submitted as its annual detailed analysis of the long-term feasibility of completing the Turkey Point 6 & 7 project, as provided for in Rule 25-6.0423, F.A.C? If not, what action, if any, should the Commission take?**

Proposed Stipulation: FPL, OPC and FIPUG stipulate, and SACE does not object, to the deferral of this issue until the 2011 nuclear cost recovery cycle.

ISSUE 19: **Is FPL's decision to continue pursuing a Combined Operating License from the Nuclear Regulatory Commission for Turkey Point Units 6 & 7 reasonable? If not, what action, if any, should the Commission take?**

Proposed Stipulation: FPL, OPC and FIPUG stipulate, and SACE does not object, to the deferral of this issue until the 2011 nuclear cost recovery cycle.

ISSUE 20: **Should the Commission approve what FPL has submitted as its annual detailed analysis of the long-term feasibility of completing the Extended Power Uprate project, as provided for in Rule 25-6.0423, F.A.C? If not, what action, if any, should the Commission take?**

Proposed Stipulation: FPL, OPC and FIPUG stipulate, and SACE does not object, to the deferral of this issue until the 2011 nuclear cost recovery cycle.

ISSUE 21: **What system and jurisdictional amounts should the Commission approve as FPL's final 2009 prudently incurred costs and final true-up amounts for the Extended Power Uprate project?**

Proposed Stipulation: Subject to the stipulation set forth below, the Commission should approve $237,677,629 (system) in EPU expenditures and $498,077 (system) in O&M expenses as FPL's 2009 costs. The resultant jurisdictional costs, net of joint owner and other adjustments, are $227,680,201 for EPU expenditures, $16,459,883 in carrying charges, and $480,934 in O&M expenses. In addition, 2009 jurisdictional base rate revenue requirements are $12,802.

For purposes of the Capacity Cost Recovery Clause ("CCRC"), the final 2009 true up amount is an over recovery of $3,837,507 in carrying costs, an over recovery of $63,533 in O&M expenses and an over recovery of $70,658 in base rate revenue requirements. The net amount of ($3,971,698) should be included in setting FPL's 2011 NCRC recovery factor.

FPL, OPC and FIPUG stipulate, and SACE does not object, that the determination of FPL's final 2009 prudently incurred costs should be deferred until the 2011 nuclear cost recovery cycle, and if any such costs are found to have been imprudently incurred such finding will be reflected as a reduction in the nuclear cost recovery clause factor determined in the 2011 proceeding. Accordingly, it is agreed that approval of the collection of the amounts presented by FPL is preliminary in nature and those amounts are subject to refund in the form of a true-up based on the outcome of the deferred consideration.

ISSUE 22: **What system and jurisdictional amounts should the Commission approve as FPL's reasonable actual/estimated 2010 costs and estimated true-up amounts for the Extended Power Uprate project?**

Proposed Stipulation: Subject to the stipulation set forth in this issue below, the Commission should approve $318,166,769 (system) in EPU expenditures and $3,210,753 (system) in O&M expenses as FPL's actual/estimated 2010 costs. The resultant jurisdictional costs, net of joint owner and other adjustments, are $302,009,710 for EPU expenditures, $42,352,323 in carrying charges, and $3,140,969 in O&M expenses. In addition, jurisdictional base rate revenue requirements are $2,018,321, with carrying charges of ($457,762).

The 2010 true up amount is an under recovery of $757,736 in carrying costs, under recovery of $992,986 in O&M expenses, and over recovery of $14,317,118 in base rate revenue requirements. The net amount of ($12,566,397) should be included in setting FPL's 2011 NCRC recovery factor.

FPL, OPC and FIPUG stipulate, and SACE does not object, that the determination of FPL's reasonable actual/estimated 2010 costs should be deferred until the 2011 nuclear cost recovery cycle, and if any such costs are found to be unreasonable that such finding will be reflected as a reduction in the nuclear cost recovery clause factor determined in the 2011 proceeding. Accordingly, it is agreed that approval of the collection of the amounts presented by FPL is preliminary in nature and those amounts are subject to refund in the form of a true-up based on the outcome of the deferred consideration.

ISSUE 23: What system and jurisdictional amounts should the Commission approve as FPL's reasonably projected 2011 costs for the Extended Power Uprate project?

Proposed Stipulation: Subject to the stipulation set forth in this issue below, the Commission should approve the amount of $547,756,895 (system) in EPU expenditures and $4,161,728 (system) in O&M expenses as FPL's projected 2011 costs. The resultant jurisdictional costs, net of joint owner and other adjustments, are $521,701,593 in EPU expenditures, $49,129,740 in carrying charges, and $3,917,202 in O&M expenses. In addition, jurisdictional base rate revenue requirements are $28,270,391.

FPL, OPC and FIPUG stipulate, and SACE does not object, that the determination of FPL's reasonably projected 2011 costs should be deferred until the 2011 nuclear cost recovery cycle, and if any such costs are found to be unreasonable such finding will be reflected as a reduction in the nuclear cost recovery clause factor determined in the 2011 proceeding. Accordingly, it is agreed that approval of the collection of the amounts presented by FPL is preliminary in nature and those amounts are subject to refund in the form of a true-up based on the outcome of the deferred consideration.

ISSUE 24: What system and jurisdictional amounts should the Commission approve as FPL's final 2009 prudently incurred costs and final true-up amounts for the Turkey Point Units 6 & 7 project?

Proposed Stipulation: Subject to the stipulation set forth in this issue below, the Commission should approve $37,731,525 (system) and $37,599,045 (jurisdictional) as FPL's final 2009 preconstruction costs, as well as $857,693 in preconstruction carrying charges and $373,162 in jurisdictional carrying charges on prior years' unrecovered site selection costs.

The final 2009 true up amount is an over recovery of $7,845,423 in pre-construction expenditures and an over recovery of $2,802,854 in preconstruction carrying charges on site selection unrecovered costs. The net amount of ($10,648,277) should be included in FPL's 2011 NCRC recovery amount.

FPL, OPC and FIPUG stipulate, and SACE does not object, that the determination of FPL's final 2009 prudently incurred preconstruction costs should be deferred until the 2011 nuclear cost recovery cycle, and if any such costs are found to be unreasonable such finding will be reflected as a reduction in the nuclear cost recovery clause factor determined in the 2011 proceeding. Accordingly, it is agreed that approval of the collection of the amounts presented by FPL is preliminary in nature and those amounts are subject to refund in the form of a true-up based on the outcome of the deferred consideration.

ISSUE 25: **What system and jurisdictional amounts should the Commission approve as reasonably estimated 2010 costs and estimated true-up amounts for FPL's Turkey Point Units 6 & 7 project?**

Proposed Stipulation: Subject to the stipulation set forth in this issue below, the Commission should approve $42,629,655 (system) and $42,125,853 (jurisdictional) as FPL's 2010 actual/estimated preconstruction costs, as well as ($4,734,785) in preconstruction carrying charges and $145,965 in jurisdictional carrying charges on prior years' unrecovered site selection costs. FPL's 2010 actual/estimated expenditures are supported by comprehensive procedures, processes and controls which help ensure that these costs are reasonable.

The 2010 true up amount is an over recovery of $48,528,272 in pre-construction expenditures and an over recovery of $5,795,691 in preconstruction carrying charges on site selection unrecovered costs. The net amount of ($54,323,963) should be included in FPL's 2011 NCRC recovery amount.

FPL, OPC and FIPUG stipulate, and SACE does not object, that the determination of FPL's 2010 actual/estimated preconstruction costs and estimated true-up amounts should be deferred until the 2011 nuclear cost recovery cycle, and if any such costs are found to be unreasonable such finding will be reflected as a reduction in the nuclear cost recovery clause factor determined in the 2011 proceeding. Accordingly, it is agreed that approval of the collection of the amounts presented by FPL is preliminary in nature and those amounts are subject to refund in the form of a true-up based on the outcome of the deferred consideration.

ISSUE 26: **What system and jurisdictional amounts should the Commission approve as reasonably projected 2011 costs for FPL's Turkey Point Units 6 & 7 project?**

Proposed Stipulation: Subject to the stipulation set forth in this issue below, the Commission should approve $29,469,475 (system) and $29,121,201 (jurisdictional) as FPL's 2011 projected preconstruction costs, as well as $2,189,194 in preconstruction carrying charges and $171,052 in carrying charges on prior years' unrecovered site selection costs. The total amount of $31,481,447 should be included in setting FPL's 2011 NCRC recovery amount.

FPL, OPC and FIPUG stipulate, and SACE does not object, that the determination of FPL's 2011 projected preconstruction costs should be deferred until the 2011 nuclear cost recovery cycle, and if any such costs are found to be unreasonable such finding will be reflected as a reduction in the nuclear cost recovery clause factor determined in the 2011 proceeding. Accordingly, it is agreed that approval of the collection of the amounts presented by FPL is preliminary in nature and those amounts are subject to refund in the form of a true-up based on the outcome of the deferred consideration.

ISSUE 27: **What is the total jurisdictional amount to be included in establishing FPL's 2011 Capacity Cost Recovery Clause factor?**

Proposed Stipulation: Subject to the stipulation set forth in this issue below, the total jurisdictional amount of $31,288,445 should be included in establishing FPL's 2011 Capacity Cost Recovery Clause factor. This amount consists of carrying charges on site selection costs, pre-construction costs and associated carrying charges for continued development of Turkey Point 6 & 7; and carrying charges on construction costs, O&M costs and base rate revenue requirements, all as provided for in Section 366.93, Florida Statutes and Rule 25-6.0423, F.A.C.

FPL, OPC and FIPUG stipulate, and SACE does not object, with respect to the Turkey Point 6 & 7 and Extended Power Uprate projects that the determination of FPL's final 2009 prudently incurred costs, reasonable actual/estimated 2010 costs and reasonably projected 2011 costs should be deferred until the 2011 nuclear cost recovery cycle, and if any such costs are found to have been imprudently incurred or unreasonable such finding will be reflected as a reduction in the nuclear cost recovery clause factor determined in the 2011 proceeding. Accordingly, it is agreed that approval of the collection of the amounts presented by FPL is preliminary in nature and those amounts are subject to refund in the form of a true-up based on the outcome of the deferred consideration.

August 17, 2010

Docket No. 100009-EI
Proposed Stipulations of Issues

In order to facilitate efficient resolution of issues, and to enhance administrative convenience, Florida Power & Light Company ("FPL") offers the following proposed stipulations. Issue number references are made with respect those set forth in Staff's final issues list and pre-hearing statement, as amended at the August 11 prehearing conference. The proposed stipulations pertain only to FPL issues.

Confidentiality hearing continuance/deferral stipulation:

Proposed Stipulation: FPL intends to file a motion not later than August 16, 2010 to defer or for continuance of the August 20 confidentiality hearing. OPC agrees that FPL can state in its motion that it is authorized to represent that OPC's position on the motion is that if the Commission defers the issues to which FPL and OPC have stipulated to the 2011 hearing cycle, then OPC agrees to a reasonable deferral or continuance of the hearing on FPL's requests for confidential classification now scheduled for August 20, and believes that deferring the hearing on confidentiality claims from August 20 to the next practicable hearing date would provide parties a more adequate ability to prepare. Southern Alliance for Clean Energy ("SACE") agrees that FPL can state in its motion that its position is the same as OPC's with respect to FPL's motion for deferral or continuance of the hearing on FPL's requests for confidential classification. The Florida Industrial Power Users Group ("FIPUG") does not object to continuance or deferral of the confidentiality hearing.

PROPOSED STIPULATIONS BY ISSUE

ISSUE 1: Do FPL's activities related to Turkey Point Units 6 & 7 qualify as "siting, design, licensing, and construction" of a nuclear power plant as contemplated by Section 366.93, F.S.?

Proposed Stipulation:

FPL, OPC and FIPUG stipulate, and SACE does not object, to the deferral of this issue until the 2011 nuclear cost recovery cycle.

ISSUE 3B: Should any FPL rate case type expense associated with the 2010 NCRC hearing for FPL be removed?

Proposed Stipulation: FPL will request deferral of this issue until the 2011 nuclear cost recovery cycle, OPC authorizes FPL to represent in its request that OPC does not object to deferral of this issue, and SACE and FIPUG do not object.

*****

ISSUE 16: **Should the Commission find that for the year 2009, FPL's accounting and costs oversight controls were reasonable and prudent for the Turkey Point Units 6 & 7 project and the Extended Power Uprate project?**

Proposed Stipulation: FPL, OPC and FIPUG stipulate, and SACE does not object, to the deferral of this issue until the 2011 nuclear cost recovery cycle.

ISSUE 17: **Should the Commission find that for the year 2009, FPL's project management, contracting, and oversight controls were reasonable and prudent for the Turkey Point Units 6 & 7 project and the Extended Power Uprate project?**

Proposed Stipulation: FPL, OPC and FIPUG stipulate, and SACE does not object, to the deferral of this issue until the 2011 nuclear cost recovery cycle.

ISSUE 18: **Should the Commission approve what FPL has submitted as its annual detailed analysis of the long-term feasibility of completing the Turkey Point 6 & 7 project, as provided for in Rule 25-6.0423, F.A.C? If not, what action, if any, should the Commission take?**

Proposed Stipulation: FPL, OPC and FIPUG stipulate, and SACE does not object, to the deferral of this issue until the 2011 nuclear cost recovery cycle.

ISSUE 19: **Is FPL's decision to continue pursuing a Combined Operating License from the Nuclear Regulatory Commission for Turkey Point Units 6 & 7 reasonable? If not, what action, if any, should the Commission take?**

Proposed Stipulation: FPL, OPC and FIPUG stipulate, and SACE does not object, to the deferral of this issue until the 2011 nuclear cost recovery cycle.

ISSUE 20: **Should the Commission approve what FPL has submitted as its annual detailed analysis of the long-term feasibility of completing the Extended Power Uprate project, as provided for in Rule 25-6.0423, F.A.C? If not, what action, if any, should the Commission take?**

Proposed Stipulation: FPL, OPC and FIPUG stipulate, and SACE does not object, to the deferral of this issue until the 2011 nuclear cost recovery cycle.

ISSUE 21: **What system and jurisdictional amounts should the Commission approve as FPL's final 2009 prudently incurred costs and final true-up amounts for the Extended Power Uprate project?**

Proposed Stipulation: Subject to the stipulation set forth below, the Commission should approve $237,677,629 (system) in EPU expenditures and $498,077 (system) in O&M expenses as FPL's 2009 costs. The resultant jurisdictional costs, net of joint owner and other adjustments, are $227,680,201 for EPU expenditures, $16,459,883 in carrying charges, and $480,934 in O&M expenses. In addition, 2009 jurisdictional base rate revenue requirements are $12,802.

For purposes of the Capacity Cost Recovery Clause ("CCRC"), the final 2009 true up amount is an over recovery of $3,837,507 in carrying costs, an over recovery of $63,533 in O&M expenses and an over recovery of $70,658 in base rate revenue requirements. The net amount of ($3,971,698) should be included in setting FPL's 2011 NCRC recovery factor.

FPL, OPC and FIPUG stipulate, and SACE does not object, that the determination of FPL's final 2009 prudently incurred costs should be deferred until the 2011 nuclear cost recovery cycle, and if any such costs are found to have been imprudently incurred such finding will be reflected as a reduction in the nuclear cost recovery clause factor determined in the 2011 proceeding. Accordingly, it is agreed that approval of the collection of the amounts presented by FPL is preliminary in nature and those amounts are subject to refund in the form of a true-up based on the outcome of the deferred consideration.

ISSUE 22: **What system and jurisdictional amounts should the Commission approve as FPL's reasonable actual/estimated 2010 costs and estimated true-up amounts for the Extended Power Uprate project?**

Proposed Stipulation: Subject to the stipulation set forth in this issue below, the Commission should approve $318,166,769 (system) in EPU expenditures and $3,210,753 (system) in O&M expenses as FPL's actual/estimated 2010 costs. The resultant jurisdictional costs, net of joint owner and other adjustments, are $302,009,710 for EPU expenditures, $42,352,323 in carrying charges, and $3,140,969 in O&M expenses. In addition, jurisdictional base rate revenue requirements are $2,018,321, with carrying charges of ($457,762).

The 2010 true up amount is an under recovery of $757,736 in carrying costs, under recovery of $992,986 in O&M expenses, and over recovery of $14,317,118 in base rate revenue requirements. The net amount of ($12,566,397) should be included in setting FPL's 2011 NCRC recovery factor.

FPL, OPC and FIPUG stipulate, and SACE does not object, that the determination of FPL's reasonable actual/estimated 2010 costs should be deferred until the 2011 nuclear cost recovery cycle, and if any such costs are found to be unreasonable that such finding will be reflected as a reduction in the nuclear cost recovery clause factor determined in the 2011 proceeding. Accordingly, it is agreed that approval of the collection of the amounts presented by FPL is preliminary in nature and those amounts are subject to refund in the form of a true-up based on the outcome of the deferred consideration.

ISSUE 23: What system and jurisdictional amounts should the Commission approve as FPL's reasonably projected 2011 costs for the Extended Power Uprate project?

Proposed Stipulation: Subject to the stipulation set forth in this issue below, the Commission should approve the amount of $547,756,895 (system) in EPU expenditures and $4,161,728 (system) in O&M expenses as FPL's projected 2011 costs. The resultant jurisdictional costs, net of joint owner and other adjustments, are $521,701,593 in EPU expenditures, $49,129,740 in carrying charges, and $3,917,202 in O&M expenses. In addition, jurisdictional base rate revenue requirements are $28,270,391.

FPL, OPC and FIPUG stipulate, and SACE does not object, that the determination of FPL's reasonably projected 2011 costs should be deferred until the 2011 nuclear cost recovery cycle, and if any such costs are found to be unreasonable such finding will be reflected as a reduction in the nuclear cost recovery clause factor determined in the 2011 proceeding. Accordingly, it is agreed that approval of the collection of the amounts presented by FPL is preliminary in nature and those amounts are subject to refund in the form of a true-up based on the outcome of the deferred consideration.

ISSUE 24: What system and jurisdictional amounts should the Commission approve as FPL's final 2009 prudently incurred costs and final true-up amounts for the Turkey Point Units 6 & 7 project?

Proposed Stipulation: Subject to the stipulation set forth in this issue below, the Commission should approve $37,731,525 (system) and $37,599,045 (jurisdictional) as FPL's final 2009 preconstruction costs, as well as $857,693 in preconstruction carrying charges and $373,162 in jurisdictional carrying charges on prior years' unrecovered site selection costs.

The final 2009 true up amount is an over recovery of $7,845,423 in pre-construction expenditures and an over recovery of $2,802,854 in preconstruction carrying charges on site selection unrecovered costs. The net amount of ($10,648,277) should be included in FPL's 2011 NCRC recovery amount.

FPL, OPC and FIPUG stipulate, and SACE does not object, that the determination of FPL's final 2009 prudently incurred preconstruction costs should be deferred until the 2011 nuclear cost recovery cycle, and if any such costs are found to be unreasonable such finding will be reflected as a reduction in the nuclear cost recovery clause factor determined in the 2011 proceeding. Accordingly, it is agreed that approval of the collection of the amounts presented by FPL is preliminary in nature and those amounts are subject to refund in the form of a true-up based on the outcome of the deferred consideration.

ISSUE 25: **What system and jurisdictional amounts should the Commission approve as reasonably estimated 2010 costs and estimated true-up amounts for FPL's Turkey Point Units 6 & 7 project?**

Proposed Stipulation: Subject to the stipulation set forth in this issue below, the Commission should approve $42,629,655 (system) and $42,125,853 (jurisdictional) as FPL's 2010 actual/estimated preconstruction costs, as well as ($4,734,785) in preconstruction carrying charges and $145,965 in jurisdictional carrying charges on prior years' unrecovered site selection costs. FPL's 2010 actual/estimated expenditures are supported by comprehensive procedures, processes and controls which help ensure that these costs are reasonable.

The 2010 true up amount is an over recovery of $48,528,272 in pre-construction expenditures and an over recovery of $5,795,691 in preconstruction carrying charges on site selection unrecovered costs. The net amount of ($54,323,963) should be included in FPL's 2011 NCRC recovery amount.

FPL, OPC and FIPUG stipulate, and SACE does not object, that the determination of FPL's 2010 actual/estimated preconstruction costs and estimated true-up amounts should be deferred until the 2011 nuclear cost recovery cycle, and if any such costs are found to be unreasonable such finding will be reflected as a reduction in the nuclear cost recovery clause factor determined in the 2011 proceeding. Accordingly, it is agreed that approval of the collection of the amounts presented by FPL is preliminary in nature and those amounts are subject to refund in the form of a true-up based on the outcome of the deferred consideration.

ISSUE 26: **What system and jurisdictional amounts should the Commission approve as reasonably projected 2011 costs for FPL's Turkey Point Units 6 & 7 project?**

Proposed Stipulation: Subject to the stipulation set forth in this issue below, the Commission should approve $29,469,475 (system) and $29,121,201 (jurisdictional) as FPL's 2011 projected preconstruction costs, as well as $2,189,194 in preconstruction carrying charges and $171,052 in carrying charges on prior years' unrecovered site selection costs. The total amount of $31,481,447 should be included in setting FPL's 2011 NCRC recovery amount.

FPL, OPC and FIPUG stipulate, and SACE does not object, that the determination of FPL's 2011 projected preconstruction costs should be deferred until the 2011 nuclear cost recovery cycle, and if any such costs are found to be unreasonable such finding will be reflected as a reduction in the nuclear cost recovery clause factor determined in the 2011 proceeding. Accordingly, it is agreed that approval of the collection of the amounts presented by FPL is preliminary in nature and those amounts are subject to refund in the form of a true-up based on the outcome of the deferred consideration.

ISSUE 27: **What is the total jurisdictional amount to be included in establishing FPL's 2011 Capacity Cost Recovery Clause factor?**

Proposed Stipulation: Subject to the stipulation set forth in this issue below, the total jurisdictional amount of $31,288,445 should be included in establishing FPL's 2011 Capacity Cost Recovery Clause factor. This amount consists of carrying charges on site selection costs, pre-construction costs and associated carrying charges for continued development of Turkey Point 6 & 7; and carrying charges on construction costs, O&M costs and base rate revenue requirements, all as provided for in Section 366.93, Florida Statutes and Rule 25-6.0423, F.A.C.

FPL, OPC and FIPUG stipulate, and SACE does not object, with respect to the Turkey Point 6 & 7 and Extended Power Uprate projects that the determination of FPL's final 2009 prudently incurred costs, reasonable actual/estimated 2010 costs and reasonably projected 2011 costs should be deferred until the 2011 nuclear cost recovery cycle, and if any such costs are found to have been imprudently incurred or unreasonable such finding will be reflected as a reduction in the nuclear cost recovery clause factor determined in the 2011 proceeding. Accordingly, it is agreed that approval of the collection of the amounts presented by FPL is preliminary in nature and those amounts are subject to refund in the form of a true-up based on the outcome of the deferred consideration.