

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Nuclear cost recovery clause.

DOCKET NO. 120009-EI
ORDER NO. PSC-12-0455-PHO-EI
ISSUED: August 31, 2012

Pursuant to Notice and in accordance with Rule 28-106.209, Florida Administrative Code (F.A.C.), a Prehearing Conference was held on August 15, 2012, in Tallahassee, Florida, before Commissioner Eduardo E. Balbis, as Prehearing Officer.

APPEARANCES:

R. ALEXANDER GLENN and JOHN T. BURNETT, ESQUIRES, Progress Energy Florida, Inc., Post Office Box 14042, St. Petersburg, FL 33733-4042; JAMES MICHAEL WALLS, BLAISE N. GAMBA and MATTHEW R. BERNIER, ESQUIRES, Carlton Fields, P.A., Post Office Box 3239, Tampa, Florida 33601-3239

On behalf of Progress Energy Florida, Inc. (PEF).

BRYAN S. ANDERSON, MITCHELL S. ROSS, KENNETH R. RUBIN and JESSICA A. CANO, ESQUIRES, Florida Power & Light Company, 700 Universe Boulevard, Juno Beach, Florida 33408-0420

On behalf of Florida Power & Light Company (FPL).

J.R. KELLY, CHARLES J. REHWINKEL, JOSEPH A. MCGLOTHLIN, and ERIK L. SAYLER, ESQUIRES, Office of Public Counsel, c/o The Florida Legislature, 111 W. Madison Street, Room 812, Tallahassee, Florida 32399-1400

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

JAMES S. WHITLOCK and GARY A. DAVIS, ESQUIRES, Davis & Whitlock, P.C., 61 North Andrews Avenue, Post Office Box 649, Hot Springs, NC 28779; E. LEON JACOBS, JR., ESQUIRE, Williams & Jacobs, 2510 Miccosukee Road, Suite 104, Tallahassee, Florida 32308

On behalf of the Southern Alliance for Clean Energy (SACE).

JON MOYLE, JR., and VICKI GORDON KAUFMAN, ESQUIRES, Moyle Law Firm, P.A., 118 North Gadsden Street, Tallahassee, Florida 32301

On behalf of the Florida Industrial Power Users Group (FIPUG).

JAMES W. BREW and F. ALVIN TAYLOR, ESQUIRES, 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).

DOCUMENT NUMBER-DATE

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FPSC-COMMISSION CLERK

CAPTAIN SAMUEL T. MILLER, ESQUIRE, USAF Utility Law Field Support Center, 139 Barnes Ave., Suite 1, Tyndall Air Force Base, Florida 32403-5319
On behalf of Federal Executive Agencies (FEA).

ROBERT SCHEFFEL WRIGHT and JOHN T. LAVIA, III, ESQUIRES, Gardner, Bist, Wiener, Wadsworth, Bowden, Bush, Dee, LaVia & Wright, P.A., 1300 Thomaswood Drive, Tallahassee, Florida 32308
On behalf of the Florida Retail Federation (FRF).

MICHAEL T. LAWSON, LISA C. BENNETT and KEINO YOUNG, ESQUIRES, 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.

PREHEARING ORDER

I. CASE BACKGROUND

In 2006, the Florida Legislature adopted legislation encouraging the development of nuclear energy in the state. Section 366.93, Florida Statutes (F.S.), directed the Commission to adopt rules providing for alternate cost recovery mechanisms that will encourage investor-owned electric utilities to invest in nuclear power plants. The Commission adopted Rule 25-6.0423, Florida Administrative Code (F.A.C.), which provides for a clause recovery proceeding annually to consider investor-owned utilities' requests for cost recovery for nuclear plants.

Both Florida Power & Light Company (FPL) and Progress Energy Florida, Inc. (PEF) petitioned the Commission for recovery of costs through the Nuclear Cost Recovery Clause (NCRC) on March 1, 2012. This is the fifth year of this roll-over docket, which is set for hearing on September 5, 2012 and September 10-13, 2012. The Office of Public Counsel (OPC), the 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), Florida Retail Federation (FRF) and the Federal Executive Agencies (FEA), have each been granted intervention in this docket. On August 6, 2012, Prehearing Statements were filed by FPL, PEF, Staff, OPC, FEA, FIPUG, FRF, PCS, and SACE.

II. CONDUCT OF PROCEEDINGS

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

III. JURISDICTION

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

IV. PROCEDURE FOR HANDLING CONFIDENTIAL INFORMATION

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

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

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

At the conclusion of that portion of the hearing that involves confidential information, all copies of confidential exhibits shall be returned to the proffering party. If a confidential exhibit has been admitted into evidence, the copy provided to the court reporter shall be retained in the Office of Commission Clerk's confidential files. If such material is admitted into the evidentiary record at hearing and is not otherwise subject to a request for confidential classification filed with the Commission, the source of the information must file a request for confidential

classification of the information within 21 days of the conclusion of the hearing, as set forth in Rule 25-22.006(8)(b), F.A.C., if continued confidentiality of the information is to be maintained.

V. PREFILED TESTIMONY AND EXHIBITS; WITNESSES

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

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

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

The parties shall avoid duplicative or repetitious cross-examination. Further, friendly cross-examination will not be allowed. Cross-examination shall be limited to witnesses whose testimony is adverse to the party desiring to cross-examine. Any party conducting what appears to be a friendly cross-examination of a witness should be prepared to indicate why that witness's direct testimony is adverse to its interests.

VI. ORDER OF WITNESSES

The order of witnesses will be as follows:

PROGRESS ENERGY FLORIDA, INC.

<u>Witness</u>	<u>Proffered By</u>	<u>Issues #</u>
<u>Direct</u>		
Will Garrett	PEF	8, 9, 13, 15
Daryl O'Cain ¹	PEF	4, 8, 9

¹ Pursuant to PEF's Notice of Adoption filed on August 29, 2012, in the event that live testimony is required, Mr. John Elnitsky will adopt Mr. Daryl O'Cain's March 1, 2012 prefiled direct testimony and sponsored Schedules.

<u>Witness</u>	<u>Proffered By</u>	<u>Issues #</u>
Thomas G. Foster	PEF	6, 10, 11, 17, 18, 19
John Elnitsky	PEF	4, 5, 6, 7, 8, 10, 11
Jeff Lyash	PEF	4, 7
Jon Franke	PEF	2, 3, 12, 13, 14, 15, 16, 17, 18
William R. Jacobs, Jr., Ph.D.	OPC	14, 16
William Coston and Jerry Hallenstein	STAFF	8, 13
Jeffery A. Small	STAFF	8, 13

Rebuttal

Jon Franke	PEF	2, 3, 12, 13, 14, 15, 16, 17, 18
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FLORIDA POWER & LIGHT COMPANY

<u>Witness</u>	<u>Proffered By</u>	<u>Issues #</u>
<u>Direct</u>		
Steven D. Scroggs	FPL	20-27
Nils Diaz	FPL	20, 26-27
Winnie Powers	FPL	24-27, 29, 30-33
Terry O. Jones	FPL	28-32
Albert M. Ferrer	FPL	29-30
John J. Reed	FPL	24-25, 28-30
Steven R. Sim	FPL	21, 28, 28A
Brian D. Smith	OPC	28, 28A, 29A
William R. Jacobs, Jr., Ph.D.	OPC	28, 28A, 29A

<u>Witness</u>	<u>Proffered By</u>	<u>Issues #</u>
David Rich and Lynn Fisher	STAFF	24, 29
Bety Maitre	STAFF	29
Yen N. Ngo	STAFF	24

Rebuttal

John J. Reed	FPL	28-29
Terry O. Jones	FPL	28-30
Albert M. Ferrer	FPL	29, 30
Nils Diaz	FPL	29, 30
Steven R. Sim	FPL	28-29A
Terry Deason	FPL	28-29A

Supplemental

Terry O. Jones	FPL	28-32
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VII. BASIC POSITIONS

PEF: Levy Nuclear Project

On August 12, 2008, the Commission issued Order No. PSC-08-0518-FOF-EI, granting PEF's petition for a determination of need for the construction of Levy Nuclear Units 1 and 2 and related facilities, including transmission facilities. The LNP will consist of two Westinghouse AP1000 nuclear-fueled generating units. The LNP will generate more than 2,000 megawatts of new nuclear generation for the benefit of PEF and its customers.

PEF performed work and incurred preconstruction and construction costs on the following activities for the LNP in 2011: (1) licensing, (2) engineering, design and procurement, (3) project management, (4) real estate acquisition, (5) transmission, and (6) power block engineering and procurement. In 2011 these LNP costs were incurred in connection with licensing application activities to support the Levy COLA to the NRC, engineering activities in support of the COLA, and activities under PEF's LNP Engineering, Procurement and

Construction (“EPC”) contract with Westinghouse, Shaw, Stone and Webster (the “Consortium”). In addition, costs were incurred for LNP transmission strategic land acquisitions.

As the Company explained last year, the Company evaluates the LNP each year and reviews any major change in the project enterprise risks or project schedule, scope, or cost as part of its on-going obligation to prudently manage the LNP. This evaluation includes the annual feasibility analysis of completing the LNP, but the Company also takes a broader view to determine how to complete the LNP in the best interests of the Company and its customers.

As discussed in the pre-filed direct testimony of Mr. John Elnitsky, after this evaluation, the LNP Program Management Team (“PMT”) determined that the LNP is feasible, both from a qualitative and quantitative perspective, but there is increased near term uncertainty and, thus, increased near term enterprise risks with respect to immediate implementation of a decision to construct the LNP. As a result of this determination, the LNP PMT evaluated whether implementation of the LNP consistent with the 2010 and 2011 LNP program of record, or an extension of the current project suspension, was in the best interests of the Company’s customers. Based on this determination, the LNP PMT recommended that the Company implement an extension of the current project suspension.

The Senior Management Committee (“SMC”) accepted the recommendation and decided that a longer term project suspension is in the best interests of the Company and its customers. The Company determined the best decision for PEF and its customers was to build the LNP at a later date, with expected commercial in-service dates for Levy Unit 1 in 2024 and Levy Unit 2 in 2025. This decision mitigates near-term uncertainty and enterprise risks. The SMC decision is reflected in the approval of the IPP, Revision 4, for the LNP. The SMC decision is also explained by Mr. Jeff Lyash in his pre-filed direct testimony filed April 30, 2012.

PEF has incurred LNP costs during the first quarter of 2012, and has estimated the project costs necessary for the remainder of 2012 and 2013. The Company’s actual/estimated 2012 and projected 2013 LNP costs are consistent with the Company’s decision and the Company’s current settlement agreement approved by the Commission. The Company will continue work necessary to obtain the LNP Combined Operating License (“COL”) from the NRC in 2012 and 2013. This work includes licensing and engineering work to address the NRC Fukushima Near Term Task Force recommendations. It also includes the licensing and engineering work to support the Company during the contested and mandatory hearing process. After this process is complete, and the Company obtains the LNP COL from the NRC, additional licensing and engineering work is necessary to maintain the COL. This will include licensing and engineering work

associated with the review of standard design changes, and updates to the license to reflect design changes.

Licensing and engineering work is also necessary in 2012 and 2013 to continue to support environmental permitting and implementation of conditions of certification ("CoC"). Some work on strategic land acquisitions for transmission lines will also continue in 2012 and 2013. The Company will incur some incremental LLE disposition and storage costs based on the schedule extension, and continued LLE milestone payments, Quality Assessment ("QA"), and vendor oversight activities associated with the continued LLE for the LNP. Additional Consortium Project Management Organization ("PMO") costs are also expected in 2012 and 2013 as a result of this continued work scope.

Pursuant to Section 366.93, Florida Statutes, and Rule 25-6.0423, F.A.C., PEF filed a petition on March 1, 2012, for cost recovery of its LNP costs. PEF filed NFR schedules, specifically Schedules T-1 through T-7B, in support of PEF's actual costs for 2011. In addition, PEF filed testimony regarding the LNP costs and the Company's project management policies and procedures. PEF then filed, on April 30, 2012, a petition, additional testimony, and NFR schedules AE-1 through AE-7B and P-1 through P-8 and Appendices, for years 2012 and 2013, respectively, in support of PEF's actual/estimated and projected costs, and schedules TOR-1 through TOR-7, which reflect total project estimated costs.

PEF developed and utilized prudent project management policies and procedures to carry out the LNP. These procedures are designed to ensure timely and cost-effective completion of the project. PEF also developed and utilized prudent accounting and cost oversight controls. Pursuant to these policies, PEF developed its actual 2011 costs and 2012 and 2013 cost estimates based on the best information available to the Company. PEF requests that the Commission find that its project management, contracting, accounting and cost oversight controls for 2011 were prudent.

PEF reasonably and prudently incurred capital preconstruction, construction carrying costs, and CCRC recoverable O&M expenses for the LNP in the amount of ***** for 2011. The prudence of all costs incurred in 2011 is supported by PEF's testimony and exhibits filed in this proceeding. Accordingly, PEF requests that the Commission approve the prudence of these actual 2011 costs.

PEF has also reasonably estimated and projected its capital preconstruction and construction LNP costs for 2012 and 2013. The actual/estimated 2012 and projected 2013 LNP costs reflect the Company's decision regarding extending the partial suspension and shifting the in-service dates for Levy Units 1 and 2 to 2024 and 2025.

Pursuant to Rule 25-6.0423(5)(c)5, F.A.C., PEF demonstrated the long-term feasibility of completing the LNP. The Company employed a two-step process to determine if the LNP is feasible. First, the Company employed a qualitative analysis of the technical and regulatory capability of completing the plants, the risks, and the costs and benefits of completing the Levy nuclear power plants. The second step was an updated, quantitative CPVRR economic analysis that includes comparisons to the cost-effectiveness CPVRR analysis in the Company's need determination proceeding for the LNP described in Order No. PSC-08-0518-FOF-EI. The updated CPVRR indicates that the LNP is economically viable and has the potential to provide PEF and its customers with fuel and environmental cost savings over the life of the project. The LNP is also feasible from a regulatory and technical perspective. PEF has, therefore, demonstrated the long-term feasibility of completing the LNP.

No Intervenor or Staff witness disputes the prudence of any cost incurred by PEF on the LNP in 2011 or the reasonableness of any actual/estimated cost and projected cost that PEF has incurred or expects to incur on the LNP in 2012 and 2013. Further, no witness filed testimony in this proceeding disputing PEF's analysis of the long-term feasibility of completing the LNP. Finally, no witness filed testimony in this proceeding disputing the prudence of PEF's LNP project management, contracting, accounting, and cost oversight controls for 2011.

As more fully developed in PEF's pre-filed testimony and exhibits, including its NFR schedules, PEF requests that the Commission determine that (1) the LNP's actual 2011 costs were prudently incurred; (2) the LNP's 2011 project management, contracting, accounting, and cost oversight controls were prudent; (3) the LNP's actual/estimated 2012 costs are reasonable; (4) the LNP's projected 2013 costs are reasonable; and (5) approve the long-term feasibility analysis for completing the LNP.

CR3 Uprate Project

On February 7, 2007, this Commission issued Order No. PSC-07-0119-FOF-EI, granting PEF's petition for determination of need for the expansion of the CR3 nuclear power plant through the CR3 Uprate project. The CR3 Uprate project is a three-phase project involving the engineering, design, equipment procurement, and equipment installation necessary to generate an additional, estimated 180 MWe of efficient nuclear power at the Company's existing nuclear unit. PEF is currently performing the work necessary to complete the third and final phase of the CR3 Uprate project.

This final phase is called the EPU work phase because, upon completion of the EPU work and NRC approval of the Company's LAR for the power uprate, the Company will be able to increase the power generated by CR3. This work includes continued engineering and licensing support for the EPU LAR that was

submitted to the NRC in June 2011 and accepted for review by the NRC in November 2011. PEF Witness Jon Franke explains the general scope of this licensing and engineering work in his March 1, 2012 and April 30, 2012 direct testimony. This work will continue through 2013 when NRC approval of the EPU LAR is expected. Further EPU work in 2013 includes design engineering finalization of the engineering change ("EC") packages for the EPU, continued payments and vendor oversight for LLE for the EPU, and the commencement of construction activities including starting mobilization of construction resources, the performance of constructability reviews, the receipt, storage, and organization of equipment and materials, the commencement of pre-fabrication activities, and continued vendor oversight.

PEF plans to complete the EPU phase of the CR3 Uprate project during the current, extended CR3 16R re-fueling outage. Under this schedule, PEF plans to start EPU construction in June 2013 and complete implementation of the EPU in June 2014 before the expected return of CR3 to commercial service. The Company's actual/estimated 2012 and projected 2013 CR3 Uprate costs are based on the Company's current schedule to complete the EPU phase during the CR3 16R extended re-fueling outage. Completion of the CR3 Uprate project during the current extended, CR3 re-fueling outage under the current, expected plan to repair and return CR3 to commercial service is in the best interests of PEF and its customers.

Pursuant to Section 366.93, Florida Statutes, and Rule 25-6.0423, F.A.C., PEF filed a petition on March 1, 2012, requesting a determination of prudence for its CR3 Uprate project 2011 costs and 2011 project management, contracting, accounting and cost oversight controls. PEF's March 1, 2012 petition also seeks the recovery of the carrying costs on its 2011 construction expenditures. PEF filed the testimony and exhibits of Mr. Franke and Mr. Garrett, including NFRs schedules T-1 through T-7B and Appendices, in support of the prudence of these costs and project management, contracting, accounting, and cost oversight controls.

On April 30, 2012, PEF filed a petition, additional testimony, and NFR schedules AE-1 through AE-7B and P-1 through P-8 and Appendices, for years 2012 and 2013, respectively, in support of PEF's actual/estimated costs for 2012 and projected costs for 2013 and NFR schedules TOR-1 through TOR-7, which reflect total project estimated costs. PEF also filed testimony and exhibits regarding the long-term feasibility of completing the CR3 Uprate project.

PEF developed and utilized prudent project management policies and procedures to carry out the CR3 Uprate project. PEF also developed and utilized prudent accounting and cost oversight controls. Pursuant to these policies, PEF submitted its actual 2011 costs and developed and submitted its actual/estimated 2012 costs and projected 2013 costs. No witness filed testimony in this proceeding disputing

the prudence of PEF's CR3 Uprate project management, contracting, accounting, and cost oversight controls for 2011. PEF requests that the Commission find that its project management, contracting, accounting, and cost oversight controls for 2011 were prudent.

No Intervenor or Staff witness disputes the prudence of costs incurred by PEF on the CR3 Uprate in 2011. Office of Public Counsel ("OPC") witness Dr. William Jacobs filed testimony recommending that PEF continue the CR3 Uprate project on a different schedule, in his view, to minimize CR3 Uprate project costs until the CR3 containment repair is nearing completion and licensing approval. PEF filed the rebuttal testimony of Mr. Franke disputing these recommendations and explaining that Jacobs' recommendation will increase, not decrease, the total cost of the project and increase the risk that implementation of the EPU work will delay the return of CR3 to commercial service. As a result, Jacobs' recommendation increases the costs and reduces the benefits of the project to PEF and its customers and should be rejected.

Pursuant to Rule 25-6.0423(5)(c)5, F.A.C., PEF demonstrated the long-term feasibility of completing the CR3 Uprate project. The Company performed both a qualitative and quantitative analysis to determine if the CR3 Uprate project remains feasible. The qualitative analysis of the CR3 Uprate project feasibility included a qualitative review of the technical and regulatory capability of completing the EPU phase work. This qualitative analysis is consistent with the Company's CR3 Uprate project qualitative feasibility analysis that was approved as reasonable by the Commission in Order No. PSC-11-0095-FOF-EI. An updated CPVRR analysis was performed for the quantitative feasibility analysis. The updated, quantitative CPVRR analysis demonstrates that the CR3 Uprate project is economically feasible. There are substantial fuel savings for PEF's customers if the EPU phase of the CR3 Uprate project is completed. No witness filed testimony in this proceeding disputing PEF's analysis of the long-term feasibility of completing the CR3 Uprate project.

PEF's pre-filed testimony and supporting exhibits and NFRs in this docket demonstrate the prudence of its costs. PEF requests that the Commission approve the prudence of the CR3 Uprate project's 2011 costs, and authorize PEF to recover the revenue requirements associated with those costs. For the time period January 2011 through December 2011, PEF is requesting a total of \$13,242,434 in revenue requirements, adjusted for the contribution to construction expenditures made by the CR3 joint owners. The joint owners of CR3 have indicated that they are electing to take their share of the additional uprate Megawatts energy ("MWe"), and contribute their share of the costs incurred to obtain these additional MWe.

As more fully developed in PEF's pre-filed testimony and exhibits, including its NFR schedules, PEF requests that the Commission determine that (1) the CR3

Uprate project's actual 2011 costs were prudently incurred; (2) the CR3 Uprate project's 2011 project management, contracting, accounting, and cost oversight controls were prudent; (3) the CR3 Uprate project's actual/estimated 2012 costs are reasonable; (4) the CR3 Uprate project's projected 2013 costs are reasonable; and (5) approve the long-term feasibility analysis for completing the CR3 Uprate project.

For all these reasons, PEF respectfully requests that the Commission grant cost recovery for PEF's CR3 Uprate and Levy Nuclear Projects.

FPL:

Section 403.519(4), Florida Statutes, Section 366.93, Florida Statutes, and Rule 25-6.0423, Florida Administrative Code ("the Rule") establish the legal and regulatory framework for the recovery of costs in the development of nuclear generation in Florida. Section 403.519(4), Florida Statutes, applies to the determination of need for a nuclear-fueled power plant. This section emphasizes the Florida Legislature's desire to improve fuel diversity, reduce dependence on fuel oil and natural gas, reduce air emission compliance costs, and contribute to the long-term stability and reliability of the electric grid in Florida; establishes the prudence standard that shall be applied in nuclear cost recovery proceedings; and makes clear that a utility is entitled to recover all prudently incurred costs. Specifically, the statute states that after a determination of need is granted, "the right of a utility to recover any costs incurred prior to commercial operation, including but not limited to costs associated with the siting, design, licensing, or construction of the plant...shall not be subject to challenge" unless a preponderance of the evidence supports a finding that "certain costs" were imprudently incurred. The statute further makes clear that (i) proceeding with the construction of the nuclear power plant following an order by the Commission approving the need for it "shall not constitute or be evidence of imprudence" and (ii) "imprudence shall not include any cost increases due to events beyond the utility's control." *See* § 403.519(4)(e), Fla. Stat.

Section 366.93, Florida Statutes, requires the Commission to establish by rule a cost recovery framework that promotes utility investment in nuclear power plants and allows for the recovery of all prudently incurred preconstruction costs and the carrying costs on construction cost balances. It also entitles utilities to increase their base rates upon commercial operation of the nuclear power plant, requires annual reporting of budgeted and actual costs, and provides for cost recovery should the project be cancelled. *See* §366.93(4), (5), and (6), Fla. Stat., respectively. In response to this legislative direction, the Commission promulgated Rule 25-6.0423, Florida Administrative Code ("the Rule"). The stated purpose of the Rule is to establish an alternative cost recovery mechanism that promotes utility investment in nuclear power plants and allow for recovery of all prudently incurred costs. It also provides for the recovery of reasonable actual/estimated costs for the current year and reasonable projected costs for the following year.

FPL is currently undertaking two nuclear projects that qualify for cost recovery under the Nuclear Cost Recovery (“NCR”) process described above – the Extended Power Uprate project (“EPU” or “Uprate Project”) at its St. Lucie and Turkey Point plants, and the development of two new nuclear units, Turkey Point 6 & 7. Each project was granted an affirmative determination of need by the Commission pursuant to Section 403.519(4), Florida Statutes, and FPL is therefore entitled to recover all its prudent and reasonable costs. *See* Order No. PSC-08-0021-FOF-EI, issued January 7, 2008 (making an affirmative determination of need for FPL’s expedited EPU project) and Order No. PSC-08-0237-FOF-EI, issued April 11, 2008 (making an affirmative determination of need for Turkey Point 6 & 7). As required by the Rule, and as demonstrated in the testimony, exhibits, and Nuclear Filing Requirements (“NFRs”) filed in this docket, FPL’s expenditures in 2011 on each of these projects were prudently incurred, and FPL’s actual/estimated 2012 expenditures and projected 2013 expenditures are reasonable. FPL has also demonstrated that its feasibility analyses for each project should be approved. No intervenor has demonstrated that a single dollar was imprudently incurred.

Significant EPU progress was made in 2011 and 2012, including the successful completion of two outages plus a shorter “mid-cycle” outage and the approval of the Turkey Point Units 3 and 4 and St. Lucie Unit 1 EPU License Amendment Requests (“LARs”) by the Nuclear Regulatory Commission (“NRC”). The EPU project is already providing 175 additional nuclear megawatts for the benefit of customers, and is on track for successful completion in early 2013. FPL continued with manufacturing, quality inspections, and receipt of long lead equipment; the management of major vendors and vendor contracts including the Engineering Procurement and Construction contract; design modification engineering; and detailed reviews and revisions to the modification installation planning and EPU outage schedules. FPL is currently in the midst of the last EPU outage at St. Lucie and will begin the last outage at Turkey Point in November. FPL’s 2011 costs were prudently incurred, and its 2012 actual/estimated costs and 2013 projected costs are reasonable. All of FPL’s EPU costs are supported by overlapping project, budget, cost and schedule controls.

For Turkey Point 6 & 7, 2011 pre-construction costs were necessarily and prudently incurred to continue with the licensing and permitting of the project. In 2012 and 2013, FPL has incurred and expects to incur licensing and permitting pre-construction costs to continue with the work necessary to obtain the licenses and permits that will allow for future construction. Throughout the development of Turkey Point 6 & 7, FPL has adhered to a deliberate, step-wise approach focused on maintaining the ability to move forward with the project, while fully recognizing and responding to industry and regulatory uncertainty. As a result, FPL has been able to make prudent and cost-effective decisions each step of the way. FPL’s 2011 costs were prudently incurred, and its 2012 actual/estimated

costs and 2013 projected costs are reasonable. All of FPL's Turkey Point 6 & 7 costs are supported by overlapping project, budget, cost and schedule controls.

Using updated non-binding cost estimates, completing the Uprate Project and Turkey Point 6 & 7 both continue to be projected as solidly cost-effective for FPL's customers. FPL has updated the inputs to its long-term feasibility analyses and these analyses show that – assuming a wide range of potential fuel costs, a wide range of potential environmental compliance costs, and updated assumptions for the load forecast and capital costs among others – each of these projects are projected to be solidly cost-effective generation additions for FPL's customers. Indeed, the EPU project is cost-effective in six out of seven different fuel cost and environmental compliance cost scenarios. Turkey Point 6 & 7 is cost-effective in five out of seven different fuel cost and environmental compliance cost scenarios, and is within the range of the non-binding cost estimate in the remaining two scenarios.

Each project is projected to provide substantial customer benefits. For example, assuming a Medium Fuel Cost and the "Environmental II" compliance cost scenario, the EPU project is projected to provide estimated fuel cost savings for FPL's customers of approximately \$114 million (nominal \$) in the first full year of operation; provide estimated fuel cost savings for FPL's customers over the life of the plant of approximately \$3.8 billion (nominal \$); diversify FPL's fuel sources by decreasing reliance on natural gas by 3% beginning in the first full year of operation; reduce annual fossil fuel usage by the equivalent of six million barrels of oil or 41 million mmBTU of natural gas; and reduce carbon dioxide ("CO₂") emissions by an estimated 32 million tons over the life of the plant.

Similarly, assuming the same fuel and environmental compliance cost scenario, Turkey Point 6 & 7 is projected to provide estimated fuel cost savings for FPL's customers of approximately \$892 million (nominal \$) in the first full year of operation; provide estimated fuel cost savings for FPL's customers over the life of the plant of approximately \$58 billion (nominal \$); diversify FPL's fuel sources by decreasing reliance on natural gas by approximately 13% beginning in the first full year of operation; reduce annual fossil fuel usage by the equivalent of 28 million barrels of oil or 177 million mmBTU of natural gas; and reduce CO₂ emissions by an estimated 255 million tons over the life of the plant, which is the equivalent of operating FPL's entire generating system with zero CO₂ emissions for 6 years.

No intervenor has filed testimony disputing the prudence of any cost that FPL has incurred for its nuclear projects. Only the Office of Public Counsel filed testimony, and that testimony was limited to the total cost that *may* be incurred for the EPU project. OPC's witnesses attempt to demonstrate that (i) circumstances have changed in a way that supports examining the cost-effectiveness of the uprate work at each power plant separately; (ii) the Turkey Point uprate work is

not cost-effective; and (iii) that the Commission should “cap” the amount of costs that FPL is permitted to recover for that Turkey Point EPU work. However, as fully explained in the rebuttal testimony filed by FPL, OPC’s “changed circumstances” reveal no project changes at all. Moreover, as presented in FPL’s pending Motion to Strike filed August 3, 2012, the requested cost recovery “cap” would violate the NCR statute, rule, and would be contrary to prior Commission orders.

The Commission’s Audit Staff filed its annual report reviewing the project management internal controls for both the EPU and Turkey Point 6 & 7 project. There were no findings related to Turkey Point 6 & 7. With respect to the EPU project, Staff recommends the disallowance of \$3.5 million in costs FPL incurred for the repair of the St. Lucie Unit 2 generator stator core after its vendor, Siemens, inadvertently left a tool in the generator that caused damage when the generator was tested. However, the rebuttal testimony of several FPL witnesses support the reasonableness and prudence of FPL’s actions in hiring, overseeing, and relying on this highly specialized vendor. Moreover, as described in the supplemental testimony of FPL witness Jones, a resolution has been reached with Siemens that FPL believes should adequately address Audit Staff’s concerns.

For all the reasons discussed above, and as explained in more detail in the direct, rebuttal, and supplemental testimony provided by its witnesses, FPL’s total requested NCR amount of \$151,491,402 should be approved. For a typical residential customer consuming 1,000 kWh per month, this amount equates to an approximate monthly bill impact of \$1.69. FPL’s request complies with the requirements of Section 366.93, Florida Statutes, complies with the Rule, and will enable the proper recovery of prudent costs incurred in the pursuit of additional nuclear generation for the benefit of FPL’s customers.

OPC:

PEF

CR3 Extended Power Uprate Project

At this time, PEF has not made a final decision as to whether to repair or retire Crystal River Unit 3 (CR3). According to public statements by Jim Rogers, the new Chief Executive Officer of Duke Energy Corporation (Duke), PEF’s parent company following the merger, it is not known whether the repair or retire decision will be made in 2012 or 2013. Following the status conference held on August 13, 2012, in Docket No. 100437-EI, it seems improbable that a decision will be made before the start of the nuclear cost recovery clause (NCRC) hearing in September. Thus, the only certainty surrounding the future of CR3 is continued uncertainty. The most reasonable approach under these circumstances would be for the Commission to defer consideration of CR3 Uprate Cost Recovery until 2013.

If the Commission nevertheless decides to consider cost recovery for CR3 in 2012, the Commission should take a very conservative approach to cost recovery. Until such time as the decision to repair or retire has been publicly announced by PEF and substantially implemented, the Citizens believe that PEF has a duty to avoid making any expenditures that are avoidable or deferrable on an Extended Power Uprate (EPU) project which may never be used and useful in the public service. Thus, PEF should take all affirmative steps in 2012 and 2013, and even looking forward to 2014, to halt or minimize all new expenditures related to the CR3 EPU project. Further, assuming the decision is made to repair CR3, EPU construction and design work that has not been contracted for or performed at this time should be deferred as late as possible in the CR3 containment repair process, when the success of the repair and Nuclear Regulatory Commission (NRC) acceptance of the repair is reasonably assured. Likewise, any avoidable or deferrable long lead equipment (LLE) should be similarly deferred. In order to facilitate the Commission's review of the EPU expenditures, PEF should review the EPU scheduled expenditures and provide to the Commission a list identifying those EPU expenditures which are avoidable or deferrable, and those which are not. If the expenditure cannot be postponed until after the decision to repair or retire has been made, PEF should provide an explanation as to why and whether that expenditure has any salvage value.

The Commission should require PEF to provide timely updates on the status of the containment repair or retire decision to the extent that that decision affects the EPU project plan and schedule, and if necessary, provide supplemental testimony.

Until such time as the decision to repair or retire CR3 has been made by PEF, the Commission should withhold any determination of reasonableness or prudence for EPU expenditures.

While the completion of the EPU appears technically feasible, the underlying decision to repair or retire CR3 has not been made. Pending such a definitive decision, the Commission should not continue allowing advanced recovery for these expenditures. To the extent the Legislature intended Section 366.93, Florida Statutes, to apply at all to EPU projects, it certainly could not have intended that the Commission would ignore reality and blithely approve the recovery of hundreds of millions of dollars for an EPU on a nuclear unit that continues to remain out of service for an unprecedented period of up to six years. While CR3 remains undecided, the Commission should defer consideration of recovery of any dollars in 2013 for that project.

OPC supports PEF's significant and continuing efforts to repair and return CR3 to commercial service as expeditiously as possible. OPC further supports PEF completing the EPU project as economically as possible. The fuel savings associated with a repaired *and* uprated CR3 would be beneficial to the customers over the unit's remaining operational life. However, the customers do not want PEF to gamble the *customers' money* on the EPU before making a final

determination to proceed with a technically feasible, and economically justified that CR3 repair. Therefore, until the decision to repair and when repair and licensability is reasonably assured, continued recovery of the EPU project costs should not be considered ripe for recovery through nuclear cost recovery clause.

If the Commission approves continued recovery for CR3 EPU, the reasonableness and prudence review should be limited only to non-avoidable or non-deferrable expenditures. It would stretch the bounds of credulity for PEF to possibly assert that any and all current and future expenditures on the CR3 EPU are critical path items that must be completed now or never. The Citizens submit that it may be reasonable to endure some delay in the implementation of the CR3 EPU, and (potentially temporarily) forego some of the benefits of an uprated CR3 so that the avoidable or deferrable uprate costs, if any, which PEF proposes to otherwise spend now will not be wasted in the event that the presumptive repair is ultimately not carried out. For these reasons, for any expenditures which are avoidable or deferrable, the Commission should place PEF on notice through this proceeding that these expenditures will be held subject to refund.

FPL

In response to concerns and criticisms related to FPL's uprate activities that OPC advanced through its witnesses in last year's hearing cycle, FPL assured the Commission that FPL's revised 2011 estimate of the total cost of its uprate projects was "well informed." FPL also persuaded the Commission to permit it to continue aggregating the separate plant sites of its St. Lucie and Turkey Point uprate activities into a single, composite feasibility analysis. Developments since last year's hearing have exploded FPL's assurances, and demonstrate the immediate need to impose greater accountability on FPL. In a single year, FPL's "well informed" estimate has increased by \$682 million. Of the \$682 million increase, fully \$555 million relates to increases in FPL's estimate of the cost of the Turkey Point uprate.

In Order No. PSC-09-0783-FOF-EI, the Commission indicated its view that the choice of the appropriate feasibility test may change, depending on the circumstances that prevail at the time the test is performed. The runaway costs at the Turkey Point uprate project constitute a dramatic change in circumstances that compels an evaluation of the status and feasibility of the Turkey Point uprate project on a separate, stand-alone basis. Otherwise, the Commission would be allowing FPL's consolidated, composite approach to its feasibility analysis to obscure the impact of an out-of-control project on customers who are asked to bear the soaring costs of that project. OPC witnesses have performed a stand-alone analysis of the Turkey Point uprate project. It demonstrates that, even under deliberately conservative (that is to say, favorable to FPL) assumptions, the Turkey Point uprate project is not cost-effective at current estimates. Further, testimony will establish that FPL ignored predictions by its consulting

engineers—whom FPL engaged specifically to advise on total costs of the Turkey Point uprate—that the Turkey Point uprate project costs would reach the exorbitant levels that FPL now belatedly acknowledges. Had FPL acted on this advice timely, and had it then performed a separate evaluation of the Turkey Point uprate, it would have been in a position to curtail a growingly infeasible project instead of completing it now at enormous cost. In light of FPL’s mismanagement of that information, the Commission should take action to protect customers from the effects of FPL’s imprudently slow realization. As a proxy for the imprudent costs—which, because the alternative was not pursued, cannot be measured directly--OPC asks the Commission to hold FPL to its most recent estimate of the costs of the Turkey Point uprate project—which, again, adds \$555 million to last year’s estimate. FPL characterizes OPC’s request as a “hard cap.” It is instead the appropriate regulatory response to FPL’s insistence on a “blank check.”

SACE:

Section 366.93, F.S., provides for advance cost recovery of certain costs for utilities engaged in the “siting, design, licensing, and construction” of nuclear power plants, including new nuclear power plants. In Order No. PSC-11-0095-FOF-EI, the Commission interpreted this statutory provision and made two distinct findings. First, the Commission found that a utility does not have to simultaneously engage in the “siting, design, licensing, and construction” of a nuclear power plant to remain eligible for cost recovery under § 366.93, Fla. Stat. However, the Commission further found that, while a utility does not have to simultaneously engage in all of these activities to remain eligible for cost recovery, it “must continue to demonstrate *its intent to build the nuclear power plant* for it seeks advance recovery of costs to be in compliance with Section 366.93, F.S.” Order at 9 (emphasis added). In the current docket, as was the case in Docket 110009-EI, the activities of PEF and FPL since January of 2011 related to the LNP and the Turkey Point 6 & 7 reactors (“proposed new nuclear projects”) fail to demonstrate this requisite intent to build. In sharp contrast, the utilities’ activities plainly demonstrate that both PEF and FPL, under the guise of caution and concern for ratepayers, continue to employ an “option creation” approach where the only intent on the part of the utilities is to create the option to construct by attempting to obtain the necessary licenses and approvals to operate these proposed new nuclear projects should it become feasible at some point in the future. This option creation approach does not satisfy the intent to build requirement, as the statute doesn’t contemplate such an approach. As a result, neither PEF nor FPL is eligible for cost recovery in Docket 120009-EI for costs related to these proposed new nuclear projects.

Further, Rule 25-6.0423(5)(c)5, F.A.C., requires PEF and FPL to submit for Commission review and approval a detailed analysis demonstrating the long-term feasibility of completing these proposed new nuclear projects. The analyses submitted by the utilities purporting to demonstrate feasibility notwithstanding, the fact of the matter is that the great uncertainty and risk surrounding the completion of these proposed new nuclear projects, which SACE has brought to

the Commission's attention in three consecutive nuclear cost recovery dockets, has rendered these proposed new projects infeasible. As this uncertainty and risk continues to increase, as it has every year, cost estimates for the proposed reactors continue to dramatically increase and projected in service dates continue to slip further into the future. Moreover, natural gas prices remain depressed and there is no greenhouse gas legislation on the horizon, and these two key drivers in any feasibility analysis, standing alone, make new nuclear generation cost prohibitive and impractical compared to other sources of generation. PEF and FPL have belatedly recognized this fact, as evidenced by their "option creation" approaches, where all major capital expenditures, as well as all activities in any way related to construction, have been deferred until some unknown point in the future. However, PEF and FPL ratepayers are already on the hook for hundreds of millions of dollars spent on these proposed new reactors which will likely never be constructed, and this is exactly what the long term feasibility requirement was intended to prevent.

It is the responsibility of the Commission to fix "fair, just and reasonable" rates for Florida ratepayers. § 366.06, Fla. Stat. In Docket 120009-EI, because FPL and PEF have failed to demonstrate the requisite intent to construct these proposed new nuclear projects, or the long-term feasibility of completing these projects, the utilities have failed to demonstrate that the costs for which they seek recovery are reasonable and/or prudent. As a result, the Commission should deny both FPL and PEF's requested cost recovery related to these proposed new nuclear projects, as is it would be unfair, unjust, and unreasonable for the Commission to allow the utilities to recover additional expenses from Florida ratepayers, until PEF and FPL themselves demonstrate the requisite intent to build the proposed new reactors, as well as the feasibility of completing them.

FIPUG: FIPUG supports the development of cost effective, reasonable and prudent energy sources to serve Florida consumers. FPL and PEF have the burden to demonstrate that the nuclear projects that are the subject of this hearing are the most reasonable and cost-effective way to serve ratepayer needs. The Commission must bear in mind that at the end of the day, it is the consumers who bear the large cost burden of these projects.

As to the Levy Nuclear Project, so long as PEF's filing is consistent with the parties' settlement, FIPUG supports the company's position on these issues.

Regarding PEF's Extended Power Uprate (EPU) at Crystal River 3 (CR3), no further costs for this project should be imposed upon ratepayers. CR3, the nuclear unit to which the uprate is applicable, has been out of service since September 2009. It is unclear if CR3 will ever come back in service. Because the EPU project is an adjunct to CR3, no more costs related to it should be borne by ratepayers unless and until a decision is made to repair the unit. To make the point by way of an analogy, you would not buy new tires for an inoperable car

unless and until you decided to repair the car. Thus, the Commission should defer all issues related to the uprate.

PCS

PHOSPHATE: In March 2012, Commission Order No. PSC-12-0104-FOF-EI approved a stipulation and settlement agreement among PEF, the Office of Public Counsel (“OPC”) and other consumer party intervenors, including PCS Phosphate. The Stipulation specifically addressed various issues concerning the Levy Nuclear Project (“LNP”), including in particular the level of LNP costs that may be recovered from customers in 2013, and for subsequent years through the first billing cycle in 2018. Insofar as PEF’s filing in this docket comports with the terms specified in the Stipulation, and provided that the Commission determines that PEF has carried its burden of proving the reasonableness of its actual and estimated LNP expenditures, PCS Phosphate does not dispute PEF’s filing relating to LNP in the 2012 proceeding. PCS Phosphate, however, remains concerned that planned LNP activities following the issuance of a combined construction and operating license (“COL”) for the project will generate untenable and unsustainable consumer rate impacts absent a material restructuring of LNP project ownership. PCS Phosphate urges the Commission to remain vigilant throughout the period covered by the Stipulation regarding the long-term financial implications of any decision by PEF to pursue construction of the Levy Project.

The Stipulation also addressed at some length rate-making issues associated with the damaged Crystal River unit 3 containment structure, including replacement fuel and purchased power costs connected to the extended plant outage, repair costs and schedule, and potential unit retirement cost recovery matters. The Stipulation needed to address immediate rate impacts to consumers and both repair and retirement tracks because PEF had not determined whether to actually attempt to repair the unit. This situation arose from the still-unfolding fallout from the containment delamination that occurred in March 2011 during the attempted repair of the September 2009 delamination event. The March delamination, and subsequent further damage that occurred in June 2011, revealed that successful repair of the CR3 containment would require a far more extensive, and expensive, effort. In fact, the physical and engineering complexities of the contemplated repair raised for the first time the possibility that repair may not be physically or economically feasible. Next, following the March 2011 event, PEF’s recovery of its insurance claims for both replacement fuel and project repair costs under its policy with Nuclear Electric Insurance Limited (“NEIL”) became immeasurably more complicated. In the year following the last nuclear cost recovery hearing, PEF status reports to the Commission in Docket No. 100437-EI and the Company’s discussions with financial analysts have revolved around the following essential questions:

1. What are the estimated cost and schedule for CR3 containment repair?
2. Is the repair likely to be successful?

3. Will NEIL fully cover the estimated cost of CR3 repairs?
4. When will a final disposition of PEF's claim with NEIL be resolved?

In the Stipulation, and its reports to the Commission in Docket No. 100437-EI, PEF has asserted that repairs would require approximately 30 months to accomplish, with a projected cost reaching \$1.3 billion. PEF has not formally updated that assessment, but the CR3 repair or retire decision has become even more controversial in the wake of the Duke Energy/ Progress Energy merger that concluded in early July, resulted in the immediate dismissal of CEO Bill Johnson, and featured all of the uncertainties associated with the CR3 repair, including in particular NEIL coverage of repair costs, as a core reason for the Duke Energy board's unprecedented action. Jim Rogers, the new Duke Energy CEO, is expected to appear to discuss these issues and respond to Commission questions at a status conference in Docket No. 100437-EI that is scheduled for August 13, 2012.

Given this remarkable confluence of events, the fact that the Commission does not have answers to any of the core questions noted above,² and the substantial likelihood that they will remain unanswered by the time the record closes in this proceeding, PCS Phosphate holds very serious reservations concerning PEF's ongoing expenditures for the CR3 power uprate ("EPU" or "Uprate") project that PEF seeks to recover through the NCRC. Specifically, PEF requests Commission approval of \$49 million in revenue requirements for clause recovery for the Uprate in 2013, projects \$110 million in continued CR3 Uprate expenditures in 2013, and at least \$76 million total in 2014 and 2015. Franke Rebuttal Testimony at 10. In light of the circumstances described above, it is unreasonable and imprudent for PEF to incur any further CR3 EPU costs or obligations at this time. PEF has an obligation to avoid or defer all possible uprate expenditures, including procurement of long lead time equipment, until all CR3 containment repair issues have been satisfactorily resolved.

In practical terms, PEF should halt, avoid or minimize all CR3 uprate expenditures in 2012-14. The Commission should require a specific and detailed justification for each and every Uprate expenditure that is not deferred until the containment structure issues are resolved. The nuclear cost recovery statute aimed to promote responsible investment in nuclear energy in Florida, but never intended to countenance wasting ratepayer dollars on a doomed project. The EPU project clearly is not feasible if the containment repair is not accomplished, and it is not reasonable under the exceptional circumstances that now prevail to charge consumers for EPU costs under the blithe presumption that the containment repair will proceed. PCS Phosphate would support continued deferral of all prudence

² Last week, PEF's new corporate Chief Executive Officer refused to commit to any repair or retirement decision on CR3 before the end of 2012, but acknowledged that the cost estimates for the contemplated repair are "trending upwards." See Duke Energy Management Second Quarter 2012 Results – Earnings Call Transcript, August 2, 2012.

questions associated with the CR3 EPU project, and further requests that all further Uprate cost recovery similarly be deferred.

FEA: FEA's positions are preliminary and based on materials filed by the parties and on discovery. FEA's final positions will be based upon all the evidence in the record and may differ from the preliminary positions stated herein.

FRF: Progress Energy Florida – Levy Nuclear Project

On March 8, 2012, the Commission issued its final order approving a Stipulation and Settlement Agreement between Progress Energy Florida and the major parties representing consumers' interests in relation to PEF's nuclear projects. The Settlement Agreement addresses what costs can be recovered from customers and what rates PEF can charge to obtain recovery of those amounts, which are, naturally, subject to a true-up in the last year of the recovery period. That last year is currently expected to be 2017. Accordingly, PEF should recover only the amounts contemplated by, and approved by the Commission in its approval of, the Settlement Agreement.

Progress Energy Florida – Crystal River 3 Extended Power Uprate

At this time, PEF has not made a final decision to repair or retire Crystal River Unit 3 (CR3), and it appears that a decision will not be made until well after the hearings in this year's NCRC Docket. The Florida Retail Federation strongly supports repairing CR3 and returning it to commercial service, provided, of course, that such repair is technically feasible and cost-effective for PEF's customers. However, given the current uncertainty surrounding the repair vs. retire decision; the FRF agrees with the Citizens that, until PEF has made an affirmative decision to repair CR3, PEF should minimize expenditures related to the CR3 EPU Project.

The FRF also agrees with the Citizens that, until the repair-retain decision has been made, the Commission should withhold any determination of reasonableness or prudence for expenditures on the CR3 EPU Project, and correspondingly defer its consideration of any CR3 EPU expenditures for cost recovery. Given that the repair-retain decision is not likely to be made until well after this year's NCRC hearings, the Commission should defer consideration of cost recovery for the CR3 EPU Project until the 2013 NCRC hearings, and should correspondingly defer allowing any cost recovery associated with the EPU Project until after full and appropriate consideration of all issues related to this Project, e.g., deferral of recovery until 2014.

Florida Power & Light Company – Turkey Point Nuclear Project

The Florida Retail Federation agrees with the Citizens of the State of Florida that, because FPL is pursuing an approach to the Turkey Point Units 6&7 Nuclear Project that limits expenses to minimal licensing activities, the FRF will join the Citizens in not contesting FPL's approach to the Turkey Point Units 6&7 Project at this time.

Florida Power & Light Company – Extended Power Uprate Projects

The Florida Retail Federation shares the concerns raised by the Citizens of the State of Florida regarding the dramatic cost overruns – approximately \$550 million in one year – experienced by FPL in connection with its Extended Power Uprate Project at its existing Turkey Point nuclear units. The Commission should accordingly take appropriate action to protect FPL's customers from the consequences of FPL's actions. In this instance, appropriate protection would be to hold FPL to a definite cost estimate for the Turkey Point EPU Project

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

VIII. ISSUES AND POSITIONS

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

POSITIONS

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

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

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

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

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

Plainly, the Florida Legislature declared that the Commission shall allow for the recovery of the carrying costs on the utility's projected construction cost balance associated with prudently incurred nuclear power plant costs. The Florida Legislature also made clear in that section that carrying costs included all components of the Allowance for Funds Used During Construction ("AFUDC"). *Id.* ("To encourage investment and provide certainty, for nuclear ... power plant need petitions submitted on or before December 31, 2010, associated carrying costs shall be equal to the pretax AFUDC in effect upon this act becoming law."). Indeed, the Florida Legislature defined "costs" to include but not be limited to "all capital investments, including rate of return," among taxes and all expenses. § 366.93(1)(a), Fla. Stats. The Commission, therefore, must allow the recovery of carrying costs on the utility's projected construction cost balance that is determined to be prudent. § 366.93(2)(b), Fla. Stats.

The Commission's authority is prescribed by the Florida Legislature and the Commission has no authority beyond the authority conferred by statute. *See United Telephone Co. of Florida, v. Public Service Commission*, 496 So. 2d 116, 118 (Fla. 1986) (the Commission derives its power solely from the legislature and cannot exercise jurisdiction where none has been granted). The Florida Legislature granted the Commission no authority to disallow carrying costs on prudently incurred costs or to change the AFUDC rate in Section 366.93. The Commission cannot create authority where none has been granted by the Florida Legislature. *Rinella v. Abifaraj*, 908 So. 2d 1126, 1129 (Fla. 1st DCA 2005) (an agency cannot disregard or ignore the express statutory provisions nor can it modify, limit, or enlarge the authority it derives from the statutes). Further, because Section 366.93 expressly controls, the Commission has no general authority to modify or limit the authority granted by the Florida Legislature in Section 366.93. *See School Board of Palm Beach County v. Survivors Charter*

Schools, Inc., 3 So. 3d 1220, 1233 (Fla. 2009); Order No. PSC-11-0095-FOF-EI, Docket No. 100009-EI, p. 9 (the Commission found it had no authority to require a utility to implement a risk sharing mechanism that precluded the utility from recovering costs the utility was entitled to recover under 366.93 where 366.93 was specifically enacted to govern nuclear cost recovery in Florida and therefore controlled).

Moreover, Commission Rule 25-6.0423, which Section 366.93(2) states that the Commission “shall establish,” describes the statutorily mandated mechanism for recovery in rates of all prudently incurred costs and prescribes that “[t]he Commission shall include carrying costs on the balance of construction costs determined to be reasonable or prudent in setting the factor in the annual Capacity Cost Recovery Clause proceeding...” Rule 25-6.0423(b)3., F.A.C. (emphasis added). An agency is required to follow its own rules. See *Collier County Bd. of County Com'rs v. Fish & Wildlife Conservation Comm'n*, 993 So. 2d 69, 72-73 (Fla. 2d DCA 2008) (citing *Vantage Healthcare Corp. v. Agency for Health Care Admin.*, 687 So. 2d 306, 308 (Fla. 1st DCA 1997) (“An agency action which conflicts with the agency’s own rules is erroneous.”)). For this additional reason, the Commission has no authority to disallow carrying costs on reasonable or prudent costs.

FPL: Yes, to the extent the underlying costs to which the carrying costs apply are determined to be imprudent. No, to the extent the underlying costs are determined to be prudent. Section 366.93(2)(b) states in relevant part as follows:

“To encourage investment and provide certainty, for nuclear or integrated gasification combined cycle power plant need petitions submitted on or before December 31, 2010, associated carrying costs shall be equal to the pretax AFUDC in effect upon this act becoming law.”

The AFUDC rate as of the date the act became law contained both a debt and an equity component which are each an integral part of the AFUDC rate. The referenced pretax AFUDC is the sole rate required by statute and no other rate is legally permissible. The statute does not provide the Commission discretion or authority to change the rate by excluding an equity component, or in any other way, for any reason. In fact, doing so would be counter to “encouraging investment and providing certainty” which is the stated intent of this provision.

OPC: This statute neither authorizes nor prohibits the disallowance of carrying charges *explicitly*. However, Section 366.93, Florida Statutes (F.S.), allows the Commission to disallow the recovery of any costs, including carrying costs, which the Commission determines to be unreasonable or imprudently incurred. Similarly, under Chapter 366, F.S., the Commission has the authority, power, and jurisdiction to disallow for recovery of *any* costs, including carrying costs, which the Commission determines to be unreasonable or imprudently incurred. Section

366.93(2)(b), F.S., does not prohibit the disallowance of carrying charges. A plain reading of the statute reveals that subsection (2)(b) merely *specifies how carrying charges will be calculated* if a utility had requested a determination of need for a nuclear or integrated gasification combined cycle power plant on or before December 31, 2010. Presumably, if a utility sought a determination of need after this date which was approved, carrying charges for that project would be calculated based upon the utility's Commission approved allowance for funds used during construction (AFUDC) rate and not Section 366.93, F.S.

SACE: Agree with OPC.

FIPUG: Yes. Costs that are imprudent or unreasonable must be disallowed.

PCS

PHOSPHATE: Yes. Florida's nuclear cost recovery statute, Chapter 366.93 F.S., authorizes, indeed it requires, the disallowance of qualified costs that are unreasonably or imprudently incurred. Such disallowances should include any carrying costs which are associated with non-prudently incurred expenditures.

FEA: Agree with OPC.

FRF: Agree with OPC.

STAFF: No position at this time.

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

POSITIONS

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

FPL: Pursuant to Section 403.519(4)(e), Florida Statutes:

"...the right of a utility to recover any costs incurred prior to commercial operation...shall not be subject to challenge unless and only to the extent the commission finds, based on a preponderance of the evidence adduced at a hearing

before the commission under s. 120.57, that certain costs were imprudently incurred.”

Accordingly, based on a preponderance of the evidence, the Commission must first find that the Company imprudently incurred certain costs; i.e., that a particular act or decision was imprudent and that act or decision caused the company to incur certain costs. If the Commission does find that a particular act or decision was imprudent, and the Commission further finds that the imprudence caused costs to be incurred, FPL would agree that costs incurred in a year subsequent to the imprudent act or decision – if in fact caused by the imprudent act or decision – would be “certain costs” within the meaning of Section 403.519(4)(e), Florida Statutes. Any such amounts would need to be identified after they occurred; i.e., future costs not yet reviewed for prudence cannot be found to be imprudent in advance of the year they are subject to prudence review.

OPC: Yes. While in Sections 366.93 and 403.519(4)(e) the Legislature intended to encourage the development of nuclear power, the Legislature also intended to empower the Commission to protect ratepayers from bearing imprudently incurred costs of any such development. While the evidentiary and procedural standards of Section 403.519(4)(e) must be met, to give effect to the Legislature’s intent the term “certain costs” must pertain to those excessive costs that are incurred as a result of the imprudence, regardless of the period in which they are incurred.

SACE: Agree with OPC.

FIPUG: Agree with OPC.

**PCS
PHOSPHATE:** Agree with OPC.

FEA: No Position

FRF: Agree with OPC.

STAFF: No position at this time.

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

POSITIONS

PEF: No. As a threshold legal matter, for all of the reasons provided above in PEF's response to Issue 1, the Commission does not have the authority, as a matter of policy or otherwise, to disallow recovery of all or any portion of the carrying costs prescribed by Section 366.93(2)(b) on costs determined to be reasonable or prudent.

There is no evidence that any of PEF's Crystal River Unit 3 Uprate project costs were imprudently or unreasonably incurred. There is, therefore, no evidentiary basis for the Commission to disallow any carrying costs on PEF's Crystal River Unit 3 project costs. No Intervenor or Staff witness disputes the prudence of costs incurred by PEF on the Crystal River Unit 3 Uprate project in 2011. No witness testified that PEF should stop or cancel the Crystal River Unit 3 Uprate project now or in 2011. Office of Public Counsel ("OPC") witness Jacobs instead filed testimony recommending that PEF continue the CR3 Uprate project, just on a different schedule, in his view, to minimize Crystal River Unit 3 Uprate project costs until the containment repair is nearing completion and licensing approval. PEF filed the direct and rebuttal testimony of Mr. Franke explaining how PEF has reasonably managed the Crystal River Unit 3 Uprate project schedule and prudently and reasonably minimized project costs. Mr. Franke further explains that Jacobs' recommendations increase, not decrease, Crystal River Unit 3 Uprate project costs. PEF, therefore, has done exactly what Jacobs says PEF should have done, PEF has minimized the Crystal River Unit 3 Uprate project costs to ensure that only those costs necessary for the Crystal River Unit 3 Uprate project work were incurred or will be incurred until a final decision to repair Crystal River Unit 3 is made. The evidence demonstrates that PEF has prudently and reasonably incurred Crystal River Unit 3 Uprate project costs and, therefore, there is no basis for the Commission to disallow any AFUDC on the Crystal River Unit 3 project costs.

FPL: Please see FPL's position on Issue 1.

OPC: Yes. Under Chapter 366, F.S., the Commission has broad authority, power, and jurisdiction to review and to disallow the recovery of any costs, including carrying costs, which the Commission determines to be unreasonable or imprudently incurred. That is an undisputed facet of ratemaking. Section 366.93, F.S., does somewhat narrow the scope of the Commission's broad authority, power, and jurisdiction to the context of projects satisfying the requirements of this statute, but it does not limit or eliminate its inherent authority to review the requested costs, including the AFUDC equity component of carrying charges, being requested for recovery for reasonableness or prudence. Based upon the testimony and discovery submitted in this docket, it is undisputed that there is a chance the CR3 EPU may never be completed in light of PEF's failure to make a final decision to repair or retire the unit. OPC is not disputing the non-equity debt component of the carrying charges. The equity component represents the

shareholder profit from the project and this profit compounds and builds the longer the project languishes due to decision making, the pace of which is in the control of the shareholders. It is very important to PEF's customers that CR3 be repaired and returned to commercial service, if technically and economically feasible. Thus, it is important that PEF move forward without any undue delay. OPC recognizes the complexity of the decision facing PEF with regard to the repair or retire decision; however, PEF should not delay that decision unduly and be rewarded by an increase in the shareholder profit that is growing as months turn into years in this docket. The profit incentive should be removed from the equation and the increase to the accrued equity component of AFUDC caused by a delay in the implementation of a final decision to repair or retire Crystal River Unit 3 should *not* inure to the benefit of PEF shareholders.

SACE: Agree with OPC.

FIPUG: Agree with OPC.

PCS

PHOSPHATE: PCS Phosphate agrees with OPC that the Commission has broad powers under Chapter 366 F.S. to disallow unreasonably or imprudently incurred costs. Those powers extend to early recovery of such costs through the nuclear cost recovery clause. The CR3 EPU project unarguably has been delayed, and may never be completed, as a result of the CR3 containment damage. The Commission certainly possesses the authority to consider whether any portion of the AFUDC equity component associated with the project should be recovered in rates.

FEA: Agree with OPC.

FRF: Agree with OPC.

STAFF: No position at this time.

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

POSITIONS

PEF: No. The Commission does not have the legal authority to unilaterally defer a determination of prudence for the Crystal River Unit 3 Uprate project 2011 costs and, thus, defer cost recovery in 2013. Rule 25-6.0423 implements the alternative cost recovery mechanisms required by the Florida Legislature in Section 366.93 and establishes annual NCRC proceedings to review the prudence and reasonableness of costs. This rule provides that the utility "shall submit for

Commission review and approval” on an annual basis by prescribed dates its actual, actual/estimated, and projected nuclear power plant project costs. *Id.* at ¶ (5)(c)1.-5. (emphasis added). Rule 25-6.0423 further states that the Commission “[a]nnually, shall make a prudence determination of the prior year’s actual construction costs and associated carrying costs, *Id.* at ¶ (5)(c)2, (emphasis added); and “shall include those costs it determines ...to be reasonable or prudent in setting the Capacity Cost Recovery Clause factor in the annual Fuel and Purchased Power Cost Recovery proceedings.” *Id.* at ¶ (5)(c)3. The Rule is mandatory and it is a well-settled that an agency is required to follow its own rules. See *Collier County Bd. of County Com'rs v. Fish & Wildlife Conservation Comm'n*, 993 So. 2d 69, 72-73 (Fla. 2d DCA 2008) (citing *Vantage Healthcare Corp. v. Agency for Health Care Admin.*, 687 So. 2d 306, 308 (Fla. 1st DCA 1997) (“An agency action which conflicts with the agency’s own rules is erroneous.”). The Commission must annually determine the prudence of PEF’s Crystal River Unit 3 Uprate project costs, including PEF’s actual construction costs and associated carrying costs.

Waiver or variance of an agency rule, including the Commission’s rules, is prescribed under Section 120.542, Florida Statutes. Variances and waivers of agency rules shall be granted “when the person subject to the rule” satisfies the prescribed criteria for waiver or variance of the rule requirements under Section 120.542 (2), Fla. Stats. Only the “person subject to” Rule 25-6.0423, which is the utility, can obtain a waiver or variance of the rule requirements requiring the Commission to annually determine the prudence of the costs for a nuclear power plant project. The Commission is bound by this express statutory limitation. The Commission cannot create authority where none has been granted by the Florida Legislature. *Rinella v. Abifaraj*, 908 So. 2d 1126, 1129 (Fla. 1st DCA 2005) (an agency cannot disregard or ignore the express statutory provisions nor can it modify, limit, or enlarge the authority it derives from the statutes).

PEF has not requested a waiver or variance of the requirements of Rule 25-6.0423 with respect to the mandatory annual prudence review of its 2011 Crystal River Unit 3 Uprate project costs, nor has PEF moved to defer or stipulated to the deferral of the determination that the Commission is required to annually make with respect to the prudence of the 2011 Crystal River Unit 3 Uprate project costs. Consequently, PEF is entitled to a prudence determination on its submitted 2011 Crystal River Unit 3 Uprate project costs. The Commission, therefore, does not have the unilateral authority to defer the mandated determinations of prudence until an unspecified time in the future.

FPL:

No. Pursuant to Rule 25-6.0423, Florida Administrative Code, a utility is entitled to a prudence determination on actual, prior year costs and a reasonableness determination on current year and projected year costs. This process is a key component of the nuclear cost recovery framework that is intended to encourage

such investment. Absent waiver by the utility, the Commission does not have the authority to defer its requisite annual prudence and reasonableness findings.

OPC:

Yes. On August 10, 2011, after stipulation by the parties to Docket No. 110009-EI, the Commission voted to approve PEF's request to defer the Commission's review of the reasonableness of PEF's 2011 and 2012 CR3 Uprate expenditures and associated carrying costs until the 2012 NCRC proceedings. The Commission also voted to defer the review of the long-term feasibility of completing the CR3 EPU until 2012. For 2009 & 2010 CR3 EPU costs, the parties stipulated that they did not object to the Commission making a final prudence determination for those costs pursuant to Sections 366.93 and 403.519(4), F.S. in the 2011 NCRC docket. By so stipulating, the parties maintained that they did not waive, concede, or give up their right to offer any testimony in this or any other Commission docket. Therefore, there is Commission precedent to defer a determination of reasonableness and prudence. At the time of the 2011 NCRC hearing, the parties understood that PEF was actively working toward a final decision to repair or retire CR3, and given the March 2011 delamination event, the testimony and exhibits provided by PEF were stale and no longer accurate. Nearly 12 months have passed since the Commission voted to defer approval, and PEF is still actively working toward a final decision to repair or retire CR3. Hopefully, PEF will reach a decision in before the 2013 hearing cycle commences. However, until such time as that decision is rendered, the Commission should withhold all determinations of reasonableness for 2012 and 2013 costs and any reasonableness or prudence reviews for 2011 EPU costs.

Similarly, the Commission has the authority to defer the necessary reasonableness and prudence reviews for the CR3 EPU because of the supervening lack of a final decision to repair or retire CR3. The Commission could determine that any decision related to CR3 EPU expenditures is not ripe for determination because it is unknown whether CR3 itself will return to commercial operation.

According to Section 366.93(6), "If the utility elects not to complete *or is precluded from completing* construction of the nuclear power plant, . . . the utility shall be allowed to recover all prudent preconstruction and construction costs. . . ." Therefore, if the Commission does not review and determine that the preconstruction and construction costs expended by a utility are prudent, then the utility cannot receive recovery of those costs even if the utility is later precluded from completing the project. The retirement of CR3 would necessarily preclude PEF from completing the EPU.

Therefore, it is important that the Commission withhold any determination of prudence for 2011 costs. Similarly, the Commission should withhold any determination of the reasonableness of the 2012 and 2013 costs being sought for recovery which is in keeping with PEF's motion requesting deferral of such

determination filed on August 14, 2012. Otherwise, there is no rational incentive for the utility to take a long, hard look at what EPU expenditures can be avoided, delayed, or deferred until the final decision to repair CR3 is made. This is the only means by which this Commission can prevent PEF from potentially throwing good money after bad, in the hopes CR3 can return to service according to the very optimistic schedule put forward by PEF. If the Commission turns off the money spigot and defers consideration of the recovery of CR3 EPU costs, PEF hopefully will stop expending money and incurring obligations related to the EPU project. If PEF is able to repair the unit and complete the EPU, PEF will be able to recover the *carrying costs* (debt and equity components) on any dollars not recovered during the interim period.

SACE: Agree with OPC.

FIPUG: Yes, the Commission has authority to defer issues related to the CR3 uprate. Given the unique circumstances of this, it should do so.

PCS

PHOSPHATE: PCS Phosphate agrees with OPC that the Commission possesses authority to defer consideration of prudence and long-term feasibility questions associated with the CR3 Uprate. There is no denying that deferring such decisions until the utility has actually made essential decisions relative to CR3 is the preferred and common sense approach to these questions.

FEA: Agree with FIPUG.

FRF: Agree with OPC.

STAFF: No position at this time.

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

POSITIONS

PEF: Yes, they do. Similar issues were included for consideration by this Commission in prior nuclear cost recovery clause ("NCRC") Dockets No. 100009-EI and No. 110009-EI. In both dockets the Commission found that PEF's activities qualified under the statute. *See* Order No. PSC-11-0547-FOF-EI and Order No. PSC-11-0095-FOF-EI. PEF's LNP activities since January 2011 are similar to the Company's prior LNP activities and they likewise qualify as the "siting, design, licensing, and construction" of a nuclear power plant under Section 366.93, Florida Statutes.

The Commission determined in Order No. PSC-0095-FOF-EI that a utility is not required to 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, Florida Statutes. *See* Order No. PSC-11-0095-FOF-EI, p. 9. Rather, the utility must demonstrate that it is incurring costs for preconstruction or construction, as defined in the statute and rule, related to the statutorily defined activities of siting, design, licensing, or construction of a nuclear power plant. If the utility demonstrates that it incurred preconstruction or construction costs for siting, design, licensing, or construction of a nuclear power plant then, the utility demonstrates, “through its actions, an intent to build the nuclear power plant for which it seeks advance recovery of costs ...,” and the utility satisfies Section 366.93, Florida Statutes. *See* Order No. PSC-11-0547-FOF-EI, p. 88; *See also* Section 366.93(1)(a), (2), Fla. Stats.

The LNP is an active project under an existing NRC licensing application and EPC contract with the Consortium to build two AP1000 nuclear power plants on a site in Levy County. As described in the direct testimony of Mr. Elnitsky and Mr. O’Cain, all costs incurred by PEF in 2011 and projected for 2012 and 2013 for the LNP are specifically related to the siting, licensing, and/or design of the Levy nuclear plants. The 2011 LNP costs were incurred in connection with licensing application activities to support the Levy COLA to the NRC, engineering activities in support of the COLA, and activities under PEF’s LNP EPC contract with the Consortium. In addition, costs were incurred for Levy Transmission strategic land acquisitions.

PEF has also incurred LNP costs during the first quarter of 2012, and has estimated the project costs necessary for the remainder of 2012 and 2013. These costs include continued LNP COLA and environmental permit licensing and engineering costs, and other costs necessary to implement the Company’s LNP decision to extend the partial suspension of the project and shift the in-service dates to 2024 and 2025.

These activities and the costs of these activities in 2011, 2012, and 2013 are consistent with efforts to actively pursue the development and construction of a new nuclear power plant. That is in fact what PEF is doing. PEF has an EPC contract for the design and construction of the LNP that is in effect. PEF is working toward and expects to receive its COL for the LNP in mid-2013 from the NRC. PEF is implementing its decision to extend the partial suspension because it is the most beneficial implementation of the LNP for the Company and its customers based on an evaluation of present uncertainty related to increased near-term enterprise risks. Through its continued costs for activities on the project related to the siting, design, and licensing of the Levy nuclear power plants, as discussed in detail in its pre-filed testimony and exhibits, PEF has demonstrated that it has the present intent to build the LNP.

OPC: See settlement approved by Order No. PSC-12-0104-FOF-EI, issued March 8, 2012, in Docket No. 120022-EI. The settlement however does not relieve PEF from demonstrating to the Commission that its activities since January 2011 related to Levy Units 1 & 2 qualify as “siting, design, licensing, and construction” of a nuclear power plant as contemplated by Section 366.93, F.S.

SACE: No. PEF’s activities since January 2011 fail to demonstrate the requisite intent to build the LNP. PEF remains focused solely on obtaining a COL from the NRC to create the option to build the LNP and has continued to defer all activities related to actual construction. Section 366.93, Fla. Stat. and Commission precedent do not contemplate such an approach. As a result, PEF is not engaged in the “siting, design, licensing, and construction” of the LNP, and is not eligible for recovery of costs related to the LNP.

FIPUG: So long as PEF’s filing is consistent with the parties’ settlement, FIPUG supports the company’s position.

PCS

PHOSPHATE: PCS Phosphate agrees with and adopts the position of the OPC.

FEA: Agree with FIPUG.

FRF: Agree with OPC.

STAFF: No position at this time.

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

POSITIONS

PEF: Yes, the Commission should approve what PEF has submitted as its annual detailed analysis of the long-term feasibility of completing the LNP. With the testimony and exhibits of Mr. John Elnitsky, PEF submitted a detailed analysis setting forth the long term feasibility of completing the LNP, consistent with the requirements of Rule 25-6.0423, F.A.C. and the analysis this Commission originally approved in Docket No. 090009-EI.

First, the Company employed a qualitative analysis of the technical and regulatory capability of completing the plants, the risks, and the costs and benefits of completing the Levy nuclear power plants. As part of this analysis, the Company demonstrated that the LNP is feasible from a regulatory, technical, and economic perspective. The LNP COL can be obtained and is still expected in mid-2013.

The LNP can be built at the Levy site. Even with lower natural gas price forecasts, the LNP is still projected to be economically beneficial to PEF's customers over the sixty-year life of the Levy nuclear units. The LNP still fulfills the Florida legislative objectives embodied in Section 403.519(4), Florida Statutes, and the Commission's need determination for the LNP. The LNP provides fuel portfolio diversity to the State and Company, reduces reliance on fossil fuels for energy production, provides carbon free energy generation, and provides base load capacity with a low cost fuel source. The long-term LNP fuel savings and related benefits for PEF's customers exist and, therefore, justify completion of the LNP. Although there is increased near-term enterprise risk due to near-term uncertainty, this increased risk has been mitigated by extension of the current project suspension.

The second step was an updated CPVRR economic analysis. The Company has developed a LNP total project cost estimate based on the current, known project costs and an expected, later in-service date for the Levy nuclear units. Applying the quantitative, CPVRR feasibility analysis to this cost estimate and the expected in-service dates, the LNP continues to be economically feasible, even with the implementation of the Company's decision. The updated CPVRR indicates that the LNP is economically viable and has the potential to provide PEF and its customers with fuel and environmental cost savings over the life of the project. The Company has demonstrated that the LNP is feasible.

If the Commission does not approve what PEF has submitted as its annual detailed analysis of the long-term feasibility of completing the LNP based on a perceived technical deficiency in PEF's filing, the Commission should specifically identify the nature of its perceived deficiencies in PEF's analysis and permit PEF to re-file with the additional requested information.

If the Commission finds that PEF's filing is technically acceptable, but that the LNP is not feasible going forward on substantive grounds, the Commission's determination would preclude the Company from completing the construction of the LNP and the Commission should allow PEF cost recovery of its prudent 2011 costs, reasonable 2012 costs, and reasonable project exit costs pursuant to Section 366.93(6).

OPC: See settlement approved by Order No. PSC-12-0104-FOF-EI, issued March 8, 2012, in Docket No. 120022-EI. The settlement however does not relieve PEF from submitting its 2012 annual detailed analysis of the long-term feasibility of completing the Levy Units 1 & 2 project, as provided for in Rule 25-6.0423, F.A.C., nor the Commission's determination of long-term feasibility.

SACE: No. PEF has failed to complete and properly analyze a realistic feasibility analysis which properly takes into account all of the factors that have resulted in the great uncertainty and risk impacting the LNP, including, but not limited to:

depressed natural gas prices, absence of a cost of carbon; other economic conditions; and the true impact of efficiency and renewable. The Commission should deny cost recovery for PEF's 2012 and 2013 costs related to the LNP.

FIPUG: So long as PEF's filing is consistent with the parties' settlement, FIPUG supports the company's position.

PCS

PHOSPHATE: PCS Phosphate agrees with and adopts the position of the OPC.

FEA: Agree with FIPUG.

FRF: Agree with OPC.

STAFF: No position at this time.

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

POSITIONS

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

OPC: See settlement approved by Order No. PSC-12-0104-FOF-EI, issued March 8, 2012, in Docket No. 120022-EI. Evidence adduced in this docket will indicate the total estimated all-inclusive cost for the planned Levy Units 1 & 2.

SACE: No position.

FIPUG: So long as PEF's filing is consistent with the parties' settlement, FIPUG supports the company's position.

PCS

PHOSPHATE: No position.

FEA: Agree with FIPUG.

FRF: Agree with OPC.

STAFF: No position at this time.

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

POSITIONS

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

OPC: See settlement approved by Order No. PSC-12-0104-FOF-EI, issued March 8, 2012, in Docket No. 120022-EI. Evidence adduced in this docket will indicate the current estimated planned commercial operation date of the planned Levy Units 1 & 2 nuclear facility.

SACE: No position.

FIPUG: So long as PEF's filing is consistent with the parties' settlement, FIPUG supports the company's position.

PCS

PHOSPHATE: No position.

FEA: Agree with FIPUG.

FRF: Agree with OPC.

STAFF: No position at this time.

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

POSITIONS

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

substantially the same as the policies and procedures reviewed and previously determined to be prudent by the Commission.

OPC: See settlement approved by Order No. PSC-12-0104-FOF-EI, issued March 8, 2012, in Docket No. 120022-EI. The settlement however does not relieve PEF from proving that its project management, contracting, accounting and cost oversight controls were reasonable and prudent for the Levy Units 1 & 2 project.

SACE: No. PEF has pushed out the projected in-service dates for the LNP even further, and the estimated cost of the LNP has again dramatically increased. Reasonable and prudent project management, contracting, accounting, and cost oversight would have prevented such an outcome. The Commission should deny cost recovery for PEF's 2011, 2012 and 2013 costs related to the LNP.

FIPUG: So long as PEF's filing is consistent with the parties' settlement, FIPUG supports the company's position.

PCS

PHOSPHATE: PCS Phosphate agrees with and adopts the position of the OPC.

FEA: Agree with FIPUG.

FRF: Agree with OPC.

STAFF: No position at this time.

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

POSITIONS

PEF: **REDACTED**
Capital Costs (System) *****; (Jurisdictional) \$67,092,100.
O&M Costs (System) \$1,258,687; (Jurisdictional) \$1,154,469.
Carrying Costs \$48,658,064.

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

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

OPC: See settlement approved by Order No. PSC-12-0104-FOF-EI, issued March 8, 2012, in Docket No. 120022-EI. These amounts are specified in the settlement.

SACE: None. PEF failed to demonstrate the requisite intent to build in Docket 110009-EI, and thus was not engaged in the “siting, design, licensing, and construction” of the LNP, and thus is not eligible for recovery of these 2011 costs related to the LNP.

FIPUG: So long as PEF’s filing is consistent with the parties’ settlement, FIPUG supports the company’s position.

PCS

PHOSPHATE: PCS Phosphate agrees with and adopts the position of the OPC.

FEA: Agree with FIPUG.

FRF: See the Stipulation and Settlement Agreement approved by Commission Order No. PSC-12-0104-FOF-EI, issued on March 8, 2012. Paragraph 4 of the Settlement Agreement specifies the NCRC rates to be charged for the Levy Nuclear Project beginning in January 2013, as well as the conceptual basis for computing those amounts and the time period over which recovery is to be made. Ultimately, although perhaps not in the 2012 NCRC hearings, the Commission will have to determine the actual (as opposed to the estimated) balance of Levy costs and carrying costs, with any true-up being made in the final year of such recovery.

STAFF: No position at this time.

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

POSITIONS

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

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

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

OPC: See settlement approved by Order No. PSC-12-0104-FOF-EI, issued March 8, 2012, in Docket No. 120022-EI. These amounts are specified in the settlement

SACE: None. PEF's activities since January of 2011 fail to demonstrate the requisite intent to build the LNP. As such, PEF is not engaged in the "siting, design, licensing, and construction" of the LNP, and thus is not eligible for recovery of costs related to the LNP. Furthermore, PEF has failed to demonstrate that completion of the LNP is feasible in the long term.

FIPUG: So long as PEF's filing is consistent with the parties' settlement, FIPUG supports the company's position.

PCS

PHOSPHATE: Agree with OPC.

FEA: Agree with FIPUG.

FRF: See the Stipulation and Settlement Agreement approved by Commission Order No. PSC-12-0104-FOF-EI, issued on March 8, 2012. Paragraph 4 of the Settlement Agreement specifies the NCRC rates to be charged for the Levy Nuclear Project beginning in January 2013, as well as the conceptual basis for computing those amounts and the time period over which recovery is to be made. Ultimately, although perhaps not in the 2012 NCRC hearings, the Commission will have to determine the actual (as opposed to the estimated) balance of Levy costs and carrying costs, with any true-up being made in the final year of such recovery.

STAFF: No position at this time.

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

POSITIONS

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

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

OPC: See settlement approved by Order No. PSC-12-0104-FOF-EI, issued March 8, 2012, in Docket No. 120022-EI. These amounts are specified in the settlement.

SACE: None. PEF's activities since January of 2011 fail to demonstrate the requisite intent to build the LNP. As such, PEF is not engaged in the "siting, design, licensing, and construction" of the LNP, and thus is not eligible for recovery of costs related to the LNP. Furthermore, PEF has failed to demonstrate that completion of the LNP is feasible in the long term.

FIPUG: Agree with OPC.

**PCS
PHOSPHATE:** Agree with OPC.

FEA: Agree with OPC.

FRF: See the Stipulation and Settlement Agreement approved by Commission Order No. PSC-12-0104-FOF-EI, issued on March 8, 2012. Paragraph 4 of the Settlement Agreement specifies the NCRC rates to be charged for the Levy Nuclear Project beginning in January 2013, as well as the conceptual basis for computing those amounts and the time period over which recovery is to be made. Ultimately, although perhaps not in the 2012 NCRC hearings, the Commission will have to determine the actual (as opposed to the estimated) balance of Levy costs and carrying costs, with any true-up being made in the final year of such recovery.

STAFF: No position at this time.

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

POSITIONS

PEF: Yes, the Commission should approve what PEF has submitted as its annual detailed analysis of the long-term feasibility of completing the CR3 Uprate. With the testimony and exhibits of Mr. Jon Franke, PEF submitted a detailed analysis setting forth the long-term feasibility of completing the CR3 Uprate, consistent with the requirements of Rule 25-6.0423 and the analysis this Commission approved as reasonable in Order No. PSC-11-0095-FOF-EI.

First, the Company employed a qualitative analysis of the technical and regulatory capability of completing the EPU, the risks, and the costs and benefits of completing the CR3 Uprate. As part of this analysis, the Company demonstrated that the CR3 Uprate is feasible from a regulatory and technical perspective. The CR3 Uprate is technically feasible. The first two phases of the CR3 Uprate project were successful when all equipment and other modifications were

installed in a timely manner with no significant issues. PEF's ongoing technical analysis and reviews confirm that the EPU phase work can be successfully completed and the full power uprate achieved. From a regulatory perspective the CR3 Uprate project is feasible. All licenses and permits for the CR3 Uprate project can be obtained. There is no reason to believe that the necessary licenses and permits for the EPU phase work will not be obtained. As a result of this analysis, PEF remains confident that the EPU phase work can be successfully completed to achieve the full power uprate and obtain the fuel-savings benefits of the full 180 MWe increase.

The second step was an updated CPVRR economic analysis. This updated analysis was performed in a manner consistent with the Company's quantitative feasibility analysis for the LNP and the Company's prior CPVRR analyses for the CR3 Uprate project that were previously reviewed and approved by the Commission in prior NCRC proceedings. The updated, quantitative CPVRR analysis demonstrates that the CR3 Uprate project is economically feasible. There are substantial fuel savings for PEF's customers if the EPU phase of the CR3 Uprate project is completed. The Company's economic analysis is based on the current, expected EPU schedule with the commencement and completion of construction during the current extended CR3 outage. The current EPU phase plan (including current project costs) was evaluated in the updated CPVRR analysis against a project cancellation option assuming no further work on the CR3 Uprate project. The economic feasibility evaluation further considered the benefits of the EPU phase of the CR3 Uprate project with and without carbon cost benefits as a result of future, potential climate control or greenhouse gas ("GHG") emission legislation or regulation. The CPVRR economic evaluation demonstrates that under the current EPU phase plan, the CR3 Uprate is economically beneficial to PEF and its customers based on fuel savings alone. The Company has demonstrated that the CR3 Uprate is feasible.

If the Commission does not approve what PEF has submitted as its annual detailed analysis of the long-term feasibility of completing the CR3 Uprate based on a perceived technical deficiency in PEF's filing, the Commission should specifically identify the nature of its perceived deficiencies in PEF's analysis and permit PEF to re-file with the additional requested information.

If the Commission finds that PEF's filing is technically acceptable, but that the CR3 Uprate is not feasible going forward on substantive grounds, the Commission's determination would preclude the Company from completing the construction of the CR3 Uprate and the Commission should allow PEF cost recovery of its prudent 2011 costs, reasonable 2012 costs, and reasonable project exit costs pursuant to Section 366.93(6).

OPC: No. Until a final decision to repair or retire has been implemented, the Commission should defer approving what PEF has submitted as its 2012 annual

detailed analyses of the long-term feasibility of completing the Crystal River Unit 3 Uprate project, as provided for in Rule 25-6.0423, F.A.C. While the long-term feasibility remains theoretically possible, until the decision to repair or retire has been made, it is not ripe to approve PEF's feasibility study.

SACE: Agree with FIPUG.

FIPUG: No. Given the great uncertainty, especially after the Duke/PEF merger, as to whether Crystal River 3 will be repaired or retired, the Commission should defer all prudence and reasonableness determinations and all cost recovery until it knows whether Crystal River 3 will be repaired or retired.

PCS

PHOSPHATE: No. PEF's feasibility analysis fails to properly consider the uncertainty regarding the future of the CR3 project.

FEA: Agree with FIPUG.

FRF: Agree with OPC.

STAFF: No position at this time.

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

POSITIONS

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

OPC: No. Until a final decision to repair or retire has been implemented, the Commission should defer determining that PEF's project management,

contracting, accounting and cost oversight controls were reasonable and prudent for the Crystal River Unit 3 Uprate project.

SACE: Agree with OPC

FIPUG: No. Given the great uncertainty, especially after the Duke/PEF merger, as to whether Crystal River 3 will be repaired or retired, the Commission should defer all prudence and reasonableness determinations and all cost recovery until it knows whether Crystal River 3 will be repaired or retired.

PCS

PHOSPHATE: PCS Phosphate agrees with and adopts the position of the OPC.

FEA: Agree with FIPUG.

FRF: Agree with OPC.

STAFF: No position at this time.

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

POSITIONS

PEF: Yes, all of the CR3 Uprate 2011 actual costs were prudently incurred. As explained in Mr. Franke's direct and rebuttal testimony in this docket, in 2011, prior to the March 14, 2011 delamination, PEF was proceeding with a project plan and CR3 Uprate project schedule to complete the Uprate project in a then-planned 2013 CR3 re-fueling outage. At that point in 2011, PEF had incurred and committed to incur costs for the EPU phase of the Uprate project in the first quarter of 2011, prior to and immediately after the mid-March 2011 delamination, that were not amenable to revision as a result of this event. Subsequent to this delamination event, however, PEF evaluated the EPU phase work and determined that the reasonable course of action was to take steps to preserve the option of completing the CR3 Uprate work in the current CR3 outage, without unnecessarily incurring costs for the CR3 Uprate project in 2011, while assessments regarding the potential repair of the CR3 containment building continued. PEF prudently minimized CR3 Uprate costs in the second half of 2011 to ensure that only those costs necessary to continue with the CR3 Uprate project if CR3 was repaired were incurred until a final decision to repair CR3 is made. As Mr. Franke further explains, the Company reallocated project management resources and reduced project management expenditures for the CR3 Uprate project by \$4.7 million, and reduced Power Bock Engineering, Procurement, and

related construction costs by \$34.2 million in 2011 as a result of PEF's efforts to minimize CR3 Uprate project costs.

As Mr. Franke also explains in his testimony, the 2011 CR3 Uprate project costs were primarily incurred for unavoidable contractual long lead equipment payments, licensing, and related engineering work on the Company's EPU LAR to the NRC, necessary engineering analyses for the engineering change packages for the EPU, and associated project management work. If PEF did not incur these costs in 2011, then, PEF effectively would have cancelled the EPU phase and rendered continuation of the CR3 Uprate project infeasible. No witness in this docket, including OPC witness Dr. Jacobs, disputes the prudence of the 2011 CR3 Uprate costs. No witness disputes PEF's evidence that the CR3 Uprate project is feasible. No witness in this docket recommends cancellation of the CR3 Uprate project now or in 2011. Accordingly, PEF's expenditures in 2011 on the CR3 Uprate project were prudent in any event, including the absence of a final decision to repair or retire CR3.

OPC: No. Until a final decision to repair or retire has been implemented, the Commission should defer determining the prudence of 2011 expenditures. However, should the Commission decide not to defer the determination of prudence on 2011 expenditures, evidence to be adduced at hearing will demonstrate that the portion, if any, of EPU expenditures that could have been deferred or delayed or avoided, but were not, were not prudently incurred.

SACE: Agree with OPC.

FIPUG: No. Until a final decision has been made to repair Crystal River 3 (if that is the final decision), it is imprudent to spend money on an uprate that may never occur. The Commission should defer all prudence and reasonableness determinations and all cost recovery until it knows whether Crystal River 3 will be repaired or retired.

PCS

PHOSPHATE: No. The Commission should defer a determination on this issue until PEF has satisfactorily resolved all CR3 containment repair questions.

FEA: Agree with FIPUG.

FRF: Agree with OPC.

STAFF: No position at this time.

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

POSITIONS

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

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

OPC: No. Until a final decision to repair or retire has been implemented, the Commission should defer consideration of approval of PEF's 2011 requested costs and final true-up amounts for the Crystal River Unit 3 Uprate project. However, should the Commission decide not to defer the determination of prudence on 2011 expenditures, then the portion, if any, of EPU expenditures that could have been deferred or delayed or avoided, but were not, should be reduced from the system and jurisdictional amount being requested.

SACE: Agree with OPC.

FIPUG: Agree with OPC.

PCS

PHOSPHATE: PCS Phosphate agrees with and adopts the position of the OPC.

FEA: Agree with FIPUG.

FRF: Agree with OPC.

STAFF: No position at this time.

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

POSITIONS

PEF: Yes. PEF's CR3 Uprate project plan reasonably preserves for customers the full benefits of the CR3 Uprate project if the Company decides to repair CR3 by providing for completion of the EPU phase when CR3 is repaired and returned to commercial service at the end of the current CR3 outage. This is a reasonable plan even though the repair of CR3 is currently under analysis. Every long-term utility resource planning decision is made under uncertain conditions and

unknown future circumstances. If utilities waited until conditions or circumstances affecting resource plans were absolutely certain, no long-term resource planning decision would ever be made. Utilities can only make reasonable, not certain, long-term resource planning decisions, just like PEF's decision to plan for completion of the EPU phase of the CR3 Uprate project if CR3 is repaired. PEF demonstrated this is a reasonable decision in the Company's feasibility analysis explained in detail in Mr. Franke's direct and rebuttal testimony. In sum, completion of the EPU phase of the CR3 Uprate project in the current extended CR3 re-fueling outage is beneficial to PEF's customers.

No witness in this proceeding contends that PEF's current plan to complete the EPU phase of the CR3 Uprate project during the current CR3 outage is unreasonable. Based on the recommendations in his testimony, OPC witness Dr. Jacobs agrees that it is reasonable for PEF to continue with work on the CR3 Uprate project and to complete the EPU phase during the current CR3 outage. No witness, including Dr. Jacobs, asserts that PEF should cancel or suspend and postpone the CR3 Uprate project. Dr. Jacobs simply recommends that PEF implement the EPU phase work on a different schedule during the current CR3 outage. As Mr. Franke explains in his direct and rebuttal testimony, however, Dr. Jacobs' recommendation will actually increase, not minimize, the cost of the EPU work to PEF's customers and may delay implementation of the EPU phase of the CR3 Uprate project, thereby delaying receipt of the fuel savings benefits to PEF's customers.

Accordingly, PEF's actual/estimated 2012 and projected 2013 CR3 Uprate costs are reasonable because the CR3 Uprate project plan is reasonable. As Mr. Franke explains in his direct testimony, these costs are necessary for the EPU scope of work required to implement the current CR3 Uprate project plan. For example, LLE progress payment costs for 2012 and 2013 reflect pre-existing contractual commitments. Deferral of these payments cannot be accomplished without cancellation or suspension of contracts, which would result in penalties, increased costs, and increased uncertainty regarding LLE contract renewals to meet the current EPU phase work schedule. Actual/estimated 2012 and projected 2013 costs also include engineering and licensing support work for the EPU LAR. No witness in this docket presents any evidence that PEF's actual/estimated 2012 or projected 2013 CR3 Uprate project costs are unreasonable because they are unnecessary for the EPU work or inaccurate or incorrect in amount because of something PEF did or did not do that it should have done. All of the actual/estimated 2012 and projected 2013 costs are necessary for PEF to complete the EPU phase work during the current CR3 outage.

OPC:

No. Until a final decision to repair or retire has been implemented, PEF should cease incurring or expending any EPU costs, and the Commission should place PEF on notice that avoidable or deferrable expenditures will be held subject to

refund. However, the Commission does not defer the determination of reasonableness on 2012 and 2013 expenditures, evidence to be adduced at hearing will demonstrate that the portion, if any, of EPU expenditures that could be deferred or delayed or avoided, but are not, will not reasonably incurred.

SACE: Agree with OPC.

FIPUG: No. Until a final decision has been made to repair Crystal River 3 (if that is the final decision), it is imprudent to spend money on an uprate that may never occur. The Commission should defer all prudence and reasonableness determinations and all cost recovery until it knows whether Crystal River 3 will be repaired or retired.

PCS

PHOSPHATE: No. PEF should halt, avoid and minimize all CR3 EPU expenditures until PEF has satisfactorily resolved all CR3 containment repair questions.

FEA: Agree with FIPUG.

FRF: Agree with OPC.

STAFF: No position at this time.

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

POSITIONS

PEF: Capital Costs (System) \$51,511,838; (Jurisdictional, net of joint owners) \$30,124,279.
O&M Costs (System) \$406,465; (Jurisdictional, net of joint owners) \$376,909.

Carrying Costs \$20,654,690 and a base revenue requirement credit of \$3,242,310. The Commission should also approve an estimated 2012 EPU project true-up under-recovery of \$8,176,192 to be included in setting the allowed 2013 NCRC recovery. The 2012 variance is the sum of an O&M under-projection of \$377,619, plus an under-projection of carrying charges of \$7,778,944 plus an over-projection of other adjustments of \$19,629.

OPC: None. Absent PEF implementing of a final decision to proceed with a repair, the Commission should defer consideration of recovery of any CR3 EPU costs until after the 2012 hearing cycle. If the Commission nevertheless proceeds, the Citizens believe cost recovery should not exceed the amounts minimally needed

to fulfill contractual or other obligations required to keep the uprate project viable for a repaired CR3.

SACE: Agree with OPC.

FIPUG: Agree with OPC.

PCS

PHOSPHATE: Agree with OPC.

FEA: Agree with OPC.

FRF: None. The Commission should defer consideration of allowing recovery of any CR3 Extended Power Uprate costs until the 2013 NCRC hearings, and defer any possible recovery of CR3 EPU costs until at least 2014.

STAFF: No position at this time.

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

POSITIONS

PEF: Capital Costs (System) \$110,242,215; (Jurisdictional, net of joint owners) \$57,990,796.
O&M Costs (System) \$506,471; (Jurisdictional, net of joint owners) \$472,466
Carrying Costs \$36,826,927 and a base revenue requirement credit of \$3,587.

OPC: None. Absent PEF implementing of a final decision to proceed with a repair, the Commission should defer allowing recovery of any CR3 EPU costs until after the 2012 hearing cycle. If the Commission nevertheless proceeds, the Citizens believe cost recovery should not exceed the amounts minimally needed to fulfill contractual or other obligations required to keep the uprate project viable for a repaired CR3.

SACE: Agree with OPC.

FIPUG: Agree with OPC.

PCS

PHOSPHATE: Agree with OPC.

FEA: Agree with OPC.

FRF: None. The Commission should defer consideration of allowing recovery of any CR3 Extended Power Uprate costs until the 2013 NCRC hearings, and defer any possible recovery of CR3 EPU costs until at least 2014.

STAFF: No position at this time.

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

POSITIONS

PEF: For the CR3 Uprate project, \$48,970,123 (before revenue tax multiplier) should be included in establishing PEF's 2013 Capacity Cost Recovery Factor ("CCRC"). Please see chart below for a further breakout of these costs.

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

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

TOPIC		Reference: PEF 2012 NCRC Filings
CR3 Uprate		
	CR3 Uprate 2011 Final True-up	\$ 3,498,125
	CR3 Uprate 2012 Estimated True-up	8,176,192
	CR3 Uprate 2013 Projections	37,295,806
	CR3 Uprate Subtotal	\$ 48,970,123
	Rev Tax Multiplier	1.00072
CR3 Uprate Total		\$ 49,005,381

OPC: The total jurisdictional amount will be a fall-out from other decisions. Recovery should be confined to the LNP project subject to the settlement. Recovery of CR3 EPU costs should be deferred from consideration until 2013.

SACE: The total jurisdictional amount will be a fall out from other decisions. There should be no recovery of LNP related costs, as PEF has failed to demonstrate the requisite intent to build and as such is not engaged in the "siting, design,

licensing, and construction” of the LNP. Furthermore, PEF has failed to demonstrate that completion of the LNP is feasible in the long term. As to CR3 EPU costs, recovery of costs should be deferred from consideration until 2013.

FIPUG: Agree with FRF.

PCS

PHOSPHATE: Agree with FRF.

FEA: Agree with FRF.

FRF: The total jurisdictional amount to be included in PEF’s 2013 Capacity Cost Recovery Clause factor is the amount determined by the Settlement Agreement approved by the Commission. The Commission should defer consideration of allowing recovery of any CR3 Extended Power Uprate costs until the 2013 NCRC hearings, and defer any possible recovery of CR3 EPU costs until at least 2014.

STAFF: No position at this time.

ISSUE 20: Do FPL’s activities since January 2011 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.?

POSITIONS

FPL: Yes. FPL is conducting activities and incurring necessary expenses in the course of actively pursuing the license, permits and approvals necessary to create the opportunity for new nuclear generation consistent with the intent of Section 366.93, F.S., which is to promote electric utility investment in nuclear power plants. Because FPL has received a determination of need for Turkey Point 6 & 7 pursuant to Section 403.519(4), F.S., FPL is entitled to recover all prudently incurred costs including, but not limited to, those associated with siting, design, licensing, and construction. The fact that FPL is not simultaneously involved in each category of activity (i.e., FPL is not currently in the construction phase of the project) does not affect the applicability of Section 366.93, F.S., and the Commission’s Nuclear Cost Recovery Rule to FPL’s Turkey Point 6 & 7 costs.

OPC: Because FPL is pursuing an approach that limits expenses to minimal licensing activities to the extent possible, OPC does not contest FPL’s approach to Turkey Point Units 6&7 or expenses related to that approach at this time.

SACE: No. FPL’s activities since January 2011 fail to demonstrate the requisite intent to build TP 6 & 7. FPL remains focused solely on obtaining a COL from the NRC to create the option to build TP 6 & 7 and has continued to defer all activities related to actual construction. Section 366.93, Fla. Stat. and Commission

precedent do not contemplate such an approach. As a result, FPL is not engaged in the “siting, design, licensing, and construction” of TP 6 & 7, and is not eligible for recovery of costs related to TP 6 & 7.

FIPUG: No position.

FEA: No position.

FRF: Agree with OPC.

STAFF: No position at this time.

ISSUE 21: Should the Commission approve what FPL has submitted as its 2012 annual detailed analysis of the long-term feasibility of completing the Turkey Point Units 6 & 7 project, as provided for in Rule 25-6.0423, F.A.C.? If not, what action, if any, should the Commission take?

POSITIONS

FPL: Yes. FPL used three different fuel cost forecasts and three environmental compliance cost forecasts for several types of emissions (SO₂, NO_x, and CO₂) in its analysis. This allows a number of combinations of fuel and environmental compliance costs to serve as possible future scenarios with which to view the economics of Turkey Point 6 & 7. FPL annually updates these fuel and environmental compliance cost projections, and updates a number of other assumptions such as the project cost and system load forecast, for its economic analysis. Based on this analysis, completion of Turkey Point 6 & 7 is projected to be solidly cost-effective for FPL’s customers in five out of seven scenarios and within the break even range in the remaining two scenarios. The results of the analysis fully support the feasibility of continuing the Turkey Point 6 & 7 project.

OPC: OPC does not contest FPL’s approach to Turkey Point Units 6&7 or expenses related to that approach at this time.

SACE: No. FPL has failed to complete and properly analyze a realistic feasibility analysis which properly takes into account all of the factors that have resulted in the great uncertainty and risk impacting TP 6 & 7, including, but not limited to: depressed natural gas prices, absence of a cost of carbon; other economic conditions; and the true impact of efficiency and renewable. The Commission should deny cost recovery for FPL’s 2012 and 2013 costs related to TP 6 & 7.

FIPUG: No position.

FEA: No position.

FRF: Agree with OPC.

STAFF: No position at this time.

ISSUE 22: What is the current total estimated all-inclusive cost (including AFUDC and sunk costs) of the proposed Turkey Point Units 6 & 7 nuclear project?

POSITIONS

FPL: FPL's current non-binding cost estimate range for Turkey Point 6 & 7 is \$3,570/kW to \$5,190/kW in overnight costs, or \$12.8 billion to \$18.7 billion including AFUDC, as stated in the April 27, 2012 direct testimony of Steven Scroggs.

OPC: No position.

SACE: No position.

FIPUG: Given the scope and size of this undertaking, this information is critical to provide transparency to those who are paying for this enormous project. Further, the Commission must consider whether the costs make sense in view of the magnitude of the expenditures. This information is in the possession of FPL and should be provided to the Commission and ratepayers.

FEA: Agree with FIPUG.

FRF: Agree with OPC.

STAFF: No position at this time.

ISSUE 23: What is the current estimated planned commercial operation date of the planned Turkey Point Units 6 & 7 nuclear facility?

POSITIONS

FPL: For planning purposes, FPL's current estimated commercial operations dates for Turkey Point Units 6 & 7 are 2022 and 2023, respectively, as stated in the April 27, 2012 direct testimony of Steven Scroggs.

OPC: No position.

SACE: No position.

FIPUG: Given the scope and size of this undertaking, this information is critical to provide transparency to those who are paying for this enormous project. Further,

the Commission must consider whether the commercial operation date makes sense in view of the magnitude of the expenditures. This information is in the possession of FPL and should be provided to the Commission and ratepayers.

FEA: Agree with FIPUG.

FRF: The FRF does not have a position as to what the estimated planned commercial operation date for the Turkey Point Units 6&7 nuclear facility may be. However, the FRF notes that the estimated date has continued to move further and further into the future, raising concerns as to the accuracy of any projected in-service date for this project.

STAFF: No position at this time.

ISSUE 24: Should the Commission find that FPL's 2011 project management, contracting, accounting and cost oversight controls were reasonable and prudent for the Turkey Point Units 6 & 7 project?

POSITIONS

FPL: Yes. FPL relies on its comprehensive corporate and overlapping business unit controls. These comprehensive and overlapping controls include FPL's Accounting Policies and Procedures; financial systems and related controls; FPL's annual budgeting and planning process and reporting and monitoring of costs incurred; and Business Unit specific controls and processes. The project internal controls are comprised of various financial systems, department procedures, work/desktop instructions and best practices, providing governance and oversight of project cost and schedule processes. The project management, cost estimation, and risk management attributes of FPL are highly developed, well documented, and adhered to by the project teams. FPL's management decisions with respect to the Turkey Point 6 & 7 project are the product of properly qualified, well-informed FPL management following appropriate procedures and internal controls.

OPC: No position.

SACE: No. As evidenced by the NRC's May 4, 2012 letter, FPL has failed to provide accurate information to the NRC relating to its COLA in the areas of safety and environmental review. Reasonable and prudent project management, contracting, accounting, and cost oversight would have prevented such an outcome. The Commission should deny cost recovery for FPL's 2011, 2012 and 2013 costs related to TP 6 & 7.

FIPUG: No position.

FEA: No position.

FRF: No position.

STAFF: No position at this time.

ISSUE 25: What system and jurisdictional amounts should the Commission approve as FPL's final 2011 prudently incurred costs and final true-up amounts for the Turkey Point Units 6 & 7 project?

POSITIONS

FPL: The Commission should approve FPL's final 2011 prudently incurred Turkey Point 6 & 7 Preconstruction expenditures of \$23,150,979 (system), \$22,877,378 (jurisdictional), and the final 2011 true-up amount of (\$14,629,595). The Commission should also approve Turkey Point 6 & 7 Preconstruction carrying charges of (\$1,555,615) and Site Selection carrying charges of \$171,052, as well as the final 2011 carrying charge true-up amount of (\$742,934). FPL's 2011 expenditures were supported by comprehensive procedures, processes and controls that help ensure those expenditures were prudent. The net amount of (\$15,372,530) should be included in FPL's 2013 NCR amount.

OPC: No position.

SACE: None. FPL failed to demonstrate the requisite intent to build in Docket 110009-EI, and thus was not engaged in the "siting, design, licensing, and construction" of TP 6 & 7, and thus is not eligible for recovery of these 2011 costs related to TP 6 & 7.

FIPUG: This is a fall out issue.

FEA: Agree with FIPUG.

FRF: No position.

STAFF: No position at this time.

ISSUE 26: What system and jurisdictional amounts should the Commission approve as reasonably estimated 2012 costs and estimated true-up amounts for FPL's Turkey Point Units 6 & 7 project?

POSITIONS

FPL: The Commission should approve as reasonable FPL's 2012 actual/estimated Preconstruction expenditures of \$34,907,426 (system), \$34,279,877

(jurisdictional), and the 2012 estimated true-up amount of \$3,257,796. The Commission should also approve as reasonable FPL's 2012 actual/estimated Preconstruction carrying charges of \$3,097,000 and Site Selection carrying charges of \$180,883, as well as the 2012 carrying charge estimated true-up amount of (\$2,523,298).

FPL's 2012 actual/estimated expenditures are supported by comprehensive procedures, processes and controls which help ensure that these costs are reasonable. The net amount of \$734,498 should be included in FPL's 2013 NCR amount.

OPC: No position.

SACE: None. FPL's activities since January of 2011 fail to demonstrate the requisite intent to build the LNP. As such, FPL is not engaged in the "siting, design, licensing, and construction" of TP 6 & 7, and thus is not eligible for recovery of costs related to TP 6 & 7. Furthermore, FPL has failed to demonstrate that completion of TP 6 & 7 is feasible in the long term.

FIPUG: This is a fall out issue.

FEA: Agree with FIPUG.

FRF: No position.

STAFF: No position at this time.

ISSUE 27: What system and jurisdictional amounts should the Commission approve as reasonably projected 2013 costs for FPL's Turkey Point Units 6 & 7 project?

POSITIONS

FPL: The Commission should approve as reasonable FPL's 2013 projected Preconstruction expenditures of \$29,211,385 (system), \$28,686,236 (jurisdictional). The Commission should also approve as reasonable FPL's 2013 projected Preconstruction carrying charges of \$6,127,036 and Site Selection carrying charges of \$180,883.

FPL's 2013 projected expenditures are supported by comprehensive procedures, processes and controls which help ensure that these costs are reasonable. The net amount of \$34,994,155 should be included in FPL's 2013 NCRC recovery amount.

OPC: No position.

SACE: None. FPL's activities since January of 2011 fail to demonstrate the requisite intent to build TP 6 & 7. As such, FPL is not engaged in the "siting, design, licensing, and construction" of TP 6 & 7, and thus is not eligible for recovery of costs related to TP 6 & 7. Furthermore, FPL has failed to demonstrate that completion of TP 6 & 7 is feasible in the long term.

FIPUG: This is a fall out issue.

FEA: Agree with FIPUG.

FRF: No position.

STAFF: No position at this time.

ISSUE 28: Should the Commission approve what FPL has submitted as its 2012 annual detailed analysis of the long-term feasibility of completing FPL's 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?

POSITIONS

FPL: Yes. FPL used three different fuel cost forecasts and three environmental compliance cost forecasts for several types of emissions (SO₂, NO_x, and CO₂) in its analysis. This allows a number of combinations of fuel and environmental compliance costs to serve as possible future scenarios with which to view the economics of the EPU project. FPL annually updates these fuel and environmental compliance cost projections, and updates a number of other assumptions such as the project cost and system load forecast, for its economic analysis. Based on this analysis, completion of the EPU Project is still projected to be solidly cost-effective for FPL's customers in six out of seven scenarios. Additionally, the substantial benefits of the EPU project in terms of fuel diversity, reduced fossil fuel usage, and system emission reductions are evident. The results of the analysis fully support the feasibility of completing the EPU Project.

FPL proposed and has managed the EPU project as a comprehensive project encompassing both sites since its inception, and the FPSC approved the project in its entirety in its need determination for the overall system and customer benefits that would be realized from the project. OPC's recommendation to break the EPU project into two separate, site-specific parts for economic feasibility purposes ignores this fact as well as the cost savings and efficiencies that have been gained by proceeding with one, comprehensive project. OPC's alleged "changed circumstances" (which are not changed circumstances at all) fail to overcome these critical considerations. Accordingly, OPC's proposal should be rejected this year for the same reasons it was rejected last year.

OPC: The Commission should not adopt FPL's feasibility study. In Order No. PSC-09-0783-FOF-EI, the Commission implicitly acknowledged that the choice of the appropriate feasibility approach is a function of the circumstances that exist at the time of study. The evidence demonstrates that the cost of the Turkey Point uprate project increased by \$555 million within the last year. Dr. Jacobs' exhibit WRJ-3(FPL) shows significant differences in the nature and scope of projects that belie FPL's rationale for continuing to assess the economic feasibility of St. Lucie and Turkey Point uprate projects on a consolidated basis. For the reasons stated in OPC's Statement of Basic Position and in its response to Issue 28A (for which OPC will seek reconsideration before the full Commission of Order No. PSC-12-0441-PCO-EI, issued August 27, 2012, excluding Issue 28A), OPC asserts that FPL's feasibility study distorts the economic feasibility of its uprate activities by masking the impact on customers of the runaway costs that FPL is experiencing at its Turkey Point uprate project. The \$555 million year-over-year increase in the estimate of the total construction costs of the Turkey Point uprate is a change in circumstance that compels a stand-alone examination of the project. Further, using FPL's own economic analysis, data, FPL's feasibility methodology, and generous (to FPL) assumptions, OPC witness Smith has performed a study of the Turkey Point uprate project, and has concluded it shows net costs, not benefits, to customers. This study separates the uprate project costs by plant site based on information provided by FPL, then (as an extremely conservative proxy for actual data) assigns 50% of fuel savings from the projects to each plant site. Given that the Turkey Point units have 14 fewer remaining unit-years of life than the St. Lucie units, and there are no material differences between fuel costs or capacity factors between the plant sites, the simplifying assumption of the 50/50 assignment of fuel savings is enormously favorable to the cost-effectiveness of the Turkey Point uprate project. In spite of this advantageous (to FPL) assumption, Mr. Smith's exhibit shows the Turkey Point uprate project would result in net costs, rather than net benefits, based on FPL's current estimate of total costs. The Commission should reject FPL's feasibility study, and accept the study of the feasibility of FPL's Turkey Point uprate project sponsored by Mr. Smith.

SACE: Agree with OPC.

FIPUG: Agree with OPC.

FEA: Agree with OPC.

FRF: Agree with OPC.

STAFF: No position at this time.

ISSUE 29: Should the Commission find that FPL's 2011 project management, contracting, accounting and cost oversight controls were reasonable and prudent for FPL's Extended Power Uprate project?

POSITIONS

FPL: Yes. FPL relies on its comprehensive corporate and overlapping business unit controls. These comprehensive and overlapping controls include FPL's Accounting Policies and Procedures; financial systems and related controls; FPL's annual budgeting and planning process and reporting and monitoring of costs incurred; and Business Unit specific controls and processes. The project internal controls are comprised of various financial systems, department procedures, work/desktop instructions and best practices, providing governance and oversight of project cost and schedule processes. The project management, cost estimation, and risk management attributes of FPL are highly developed, well documented, and adhered to by the project teams. FPL's management decisions with respect to the EPU project are the product of properly qualified, well-informed FPL management following appropriate procedures and internal controls. Additionally, FPL agrees with Staff's position regarding the St. Lucie Unit 2 nuclear plant stator core work.

OPC: See OPC's position for Issue 29A.

SACE: Agree with OPC.

FIPUG: Agree with OPC.

FEA: Agree with OPC.

FRF: Agree with OPC.

STAFF: As to the testimony of staff witnesses Rich and Fisher regarding the St Lucie Unit 2 nuclear plant stator core work:

In its 2012 actual/estimated costs for St. Lucie Unit 2, FPL included costs payable to Siemens for contract work at St. Lucie nuclear plant. Commission's Audit Staff recommended a \$3.5 million disallowance of EPU costs with respect to the St. Lucie nuclear plant stator core work. Commission audit staff noted that there was an additional 22 days of outage associated with the nuclear plant stator core work. FPL filed rebuttal testimony controverting audit staff's findings regarding FPL's management of the St. Lucie nuclear plant stator core work. FPL also responded to Staff discovery stating that the stator alignment pin issue added approximately 195 unplanned outage hours to the total duration of the outage.

Subsequent to the filing of its rebuttal testimony, FPL filed supplemental testimony and exhibits in which it explained that FPL negotiated a new agreement related to FPL's costs for the St. Lucie Unit 2 stator core repair work. The new agreement removes the \$3.5 million of costs FPL was responsible for paying to Siemens for the stator core work.

An additional aspect of the new agreement between FPL and Siemens was a reduction of \$(confidential) of the amount owed by FPL to Siemens for other contractual work. The basis for the reduction is the resolution of the nuclear stator core work.

Accordingly, staff recommends the Commission find that Audit Staff's recommendation for the disallowance is now moot because FPL negotiated a resolution with its contractor which adequately addresses the considerations raised by Audit Staff. Audit Staff will verify the removal of these costs in its next scheduled annual audit.

As to the remaining costs, staff takes no position at this time.

ISSUE 29A: Should the Commission find that in the previous year (2011) and the current year to date (2012), FPL managed the Extended Power Uprate activities in a reasonable and prudent manner? If not, what action should the Commission take?

POSITIONS

FPL: Yes. During the previous year (2011) and the current year to date (2012), FPL managed the Extended Power Uprate activities in a reasonable and prudent manner. Throughout this time period, FPL managers employed and properly supervised the work each day of thousands of employees and contractors performing complex engineering, construction and other work for the Extended Power Uprate project at FPL's Florida nuclear sites. During this period, FPL completed the extended power uprate work of two nuclear units (one each at the St. Lucie and Turkey Point plants), completed the design engineering required to support the two final outages for the project, and obtained approval of the required Nuclear Regulatory Commission Extended Power Uprate License Amendments for Turkey Point Units 3 and 4 and St. Lucie Unit 1. The project is on track to achieve a total of 522 to 532 MW of additional nuclear generating capacity to serve FPL's customers – which is up to 33% more nuclear capacity than projected at the beginning of the project. About 397 MW of this capacity is projected to be in service by year-end 2012. The project is nearing completion, with the final Extended Power Uprate outage expected to be completed in early 2013. FPL's non-binding cost estimate range for the project increased in 2012 compared to 2011. The increase reflects completion of engineering for the last Turkey Point implementation outages, which identified the need for additional human effort to safely construct and implement the necessary uprate work.

Through its prudent and reasonable management of the Extended Power Uprate activities, FPL is successfully carrying out the policy direction of the Florida legislature and the Commission to increase nuclear generation in Florida, thereby increasing fuel diversity, reducing usage of fossil fuel including foreign oil, reducing fuel costs, enhancing electric system reliability and lowering environmental emissions – all of which is benefitting and will continue to benefit FPL’s customers and Florida residents for decades.

OPC: No. The evidence establishes that FPL ignored predictions by its consulting engineers that the costs of the Turkey Point uprate project would reach the soaring levels it now is belatedly projecting. Had FPL acted on this advice in a timely fashion, and had FPL been concerned about the impact of skyrocketing costs of the viability of the Turkey Point uprate project from customers’ perspective, it would have assessed the Turkey Point uprate project separately and curtailed the project early in its life. At this advanced stage of the project, OPC believes FPL should complete the project. However, the Commission should recognize that, through its composite depiction of economic feasibility in the aggregate, FPL is attempting to use a more cost-effective project (St. Lucie uprate) to justify one that is not cost-effective to customers (Turkey Point uprate). The Commission should protect customers from bearing the impact of FPL’s imprudent management of the Turkey Point uprate. The specific pattern of imprudence that is the subject of this issue began in 2010 and continued into 2011 and 2012. Therefore, the Commission should find that in the previous year (2011) and the current year to date (2012), FPL failed to manage those activities associated with Turkey Point uprate project that have led to a \$555 million increase within the last year in a reasonable and prudent manner. Thus, OPC submits the Commission should hold FPL to the current estimate of the costs of completing the Turkey Point uprate project.

SACE: Agree with OPC.

FIPUG: Agree with OPC.

FEA: Agree with OPC.

FRF: Agree with OPC.

STAFF: No position at this time.

ISSUE 30: What system and jurisdictional amounts should the Commission approve as FPL’s final 2011 prudently incurred costs and final true-up amounts for FPL’s Extended Power Uprate project?

POSITIONS

FPL: The Commission should approve as prudent FPL's final 2011 EPU expenditures of \$667,493,187 (system), \$640,855,812 (jurisdictional, net of participants). The Commission should also approve as prudent FPL's final 2011 EPU O&M costs, including interest, of \$12,172,529 (system), \$11,584,442 (jurisdictional, net of participants); carrying charges of \$78,251,442; the final 2011 true-up of O&M costs including interest of (\$679,375); and final 2011 true-up of carrying charges of \$7,964,134. In addition, the Commission should approve as prudent FPL's final 2011 EPU base rate revenue requirements, including carrying charges, of \$9,138,883; and the final 2011 true-up of revenue requirements, including carrying charges, of (\$7,014,702).

FPL's 2011 EPU expenditures are supported by comprehensive procedures, processes and controls that help ensure those expenditures were the result of prudent decision making. The net amount of \$270,057 should be approved and included in FPL's 2013 NCRC recovery amount.

OPC: See OPC's position on Issue 29A.

SACE: Agree with OPC.

FIPUG: This is a fall out issue.

FEA: Agree with FIPUG.

FRF: Agree with OPC.

STAFF: No position at this time.

ISSUE 31: What system and jurisdictional amounts should the Commission approve as reasonably estimated 2012 costs and estimated true-up amounts for FPL's Extended Power Uprate project?

POSITIONS

FPL: The Commission should approve as reasonable FPL's 2012 actual/estimated EPU expenditures of \$1,058,854,365 (system), \$1,017,306,408 (jurisdictional, net of participants). The Commission should also approve as reasonable FPL's 2012 actual/estimated EPU O&M costs, including interest, of \$15,000,523 (system), \$14,546,749 (jurisdictional, net of participants); carrying charges of \$104,909,726; the 2012 estimated true-up of O&M costs including interest of \$9,085,552; and the true up of carrying charges of \$37,645,274. In addition, the Commission should approve as reasonable FPL's 2012 actual/estimated EPU base rate revenue requirements, including carrying charges, of \$79,075,219; and the

2012 estimated true-up of revenue requirements, including carrying charges, of (\$1,115,554).

FPL's 2012 actual/estimated EPU costs are supported by comprehensive procedures, processes and controls which help ensure that these costs are reasonable. The net amount of \$45,615,272 should be included in setting FPL's 2013 NCRC recovery amount. (Jones, Ferrer, Powers)

OPC: See OPC's position on Issue 29A.

SACE: Agree with OPC.

FIPUG: This is a fall out issue.

FEA: Agree with FIPUG.

FRF: Agree with OPC.

STAFF: No position at this time.

ISSUE 32: What system and jurisdictional amounts should the Commission approve as reasonably projected 2013 costs for FPL's Extended Power Uprate project?

POSITIONS

FPL: The Commission should approve as reasonable 2013 projected EPU expenditures of \$163,996,072 (system), \$161,047,828 (jurisdictional, net of participants). The commission should also approve as reasonable 2013 EPU O&M costs, including interest, of \$5,170,770 (system), \$5,077,869 (jurisdictional, net of participants); and \$15,433,878 in carrying charges. In addition, the Commission should also approve as reasonable EPU base rate revenue requirements of \$64,738,202.

The total amount of \$85,249,950 should be included in setting FPL's 2013 NCR recovery amount. FPL's 2013 projected construction expenditures are supported by comprehensive procedures, processes and controls which help ensure that these projected costs are reasonable.

OPC: See OPC's position on Issue 29A.

SACE: Agree with OPC.

FIPUG: This is a fall out issue.

FEA: Agree with FIPUG.

FRF: Agree with OPC.

STAFF: No position at this time.

ISSUE 33: What is the total jurisdictional amount to be included in establishing FPL's 2013 Capacity Cost Recovery Clause factor?

POSITIONS

FPL: The total jurisdictional amount of \$151,491,402 should be included in establishing FPL's 2013 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 for the EPU project, all as provided for in Section 366.93 and the Rule.

OPC: See OPC's position on Issue 29A.

SACE: The total jurisdictional amount will be a fall out from other decisions. There should be no recovery of TP 6 & 7 related costs, as FPL has failed to demonstrate the requisite intent to build and as such is not engaged in the "siting, design, licensing, and construction" of TP 6 & 7. Furthermore, FPL has failed to demonstrate that completion of TP 6 & 7 is feasible in the long term. As to EPU costs, the Commission should hold FPL to the current estimate of the costs of completing the Turkey Point uprate project.

FIPUG: This is a fall out issue.

FEA: Agree with FIPUG.

FRF: Agree with OPC.

STAFF: No position at this time.

IX. EXHIBIT LIST

PROGRESS ENERGY FLORIDA, INC.

<u>Witness</u>	<u>Proffered By</u>		<u>Description</u>
			<u>Direct</u>
Will Garrett	PEF	WG-1	CONFIDENTIAL - Schedules T-1 through T-7B of the Nuclear Filing Requirements (“NFRs”) and Appendices A through D, which reflect PEF’s retail revenue requirements for the LNP from January 2011 through December 2011 (Daryl O’Cain sponsoring portions of schedules T-4, T-4A, T-6, as well as Appendix D, and sponsoring schedules T-6A through T-7B).
Will Garrett	PEF	WG-2	CONFIDENTIAL - Schedules T-1 through T-7B of the NFRs and Appendices A through D, which reflect PEF’s retail revenue requirements for the CR3 Uprate project from January 2011 through December 2011 (Jon Franke sponsoring portions of schedules T-4, T-4A, T-6, as well as Appendix D, and sponsoring schedules T-6A through T-7B).

<u>Witness</u>	<u>Proffered By</u>		<u>Description</u>
Thomas G. Foster	PEF	TGF-1	CONFIDENTIAL - Schedules AE-1 through AE-7B of the NFRs and Appendices A through F which reflect PEF's retail revenue requirements for the LNP from January 2012 through December 2012 (John Elnitsky sponsoring portions of schedules AE-4, AE-4A, and AE-6 and sponsoring schedules AE-6A through AE-7B).
Thomas G. Foster	PEF	TGF-2	CONFIDENTIAL - Schedules P-1 through P-8 of the NFRs and Appendices A through E, which reflect PEF's projected retail revenue requirements for the LNP for January 2013 through December 2013 (John Elnitsky sponsoring portions of P-4, P-6 and sponsoring P-6A through P-7B).
Thomas G. Foster	PEF	TGF-3	CONFIDENTIAL - Schedule TOR-1 through TOR-7, which reflects the total project estimated costs for the LNP up to the in-service date (John Elnitsky sponsoring portions of TOR-4, TOR-6 & sponsoring TOR-6A and TOR-7).

<u>Witness</u>	<u>Proffered By</u>		<u>Description</u>
Thomas G. Foster	PEF	TGF-4	CONFIDENTIAL - Schedules AE-1 through AE-7B of the NFRs and Appendices A through E, which reflect PEF's retail revenue requirements for the CR3 Uprate Filing from January 2012 through December 2012 (Jon Franke sponsoring portions of Schedules AE-4, AE-4A, AE-6.3 and Appendix B, and sponsoring schedules AE-6A.3 through AE-7B).
Thomas G. Foster	PEF	TGF-5	CONFIDENTIAL - Schedules P-1 through P-8 of the NFRs and Appendices A through E, which reflect PEF's projected retail revenue requirements for the CR3 Uprate filing for January 2013 through December 2013 (Jon Franke sponsoring portions of P-4 , P-6.3, and sponsoring P-6.3A through P-7B).
Thomas G. Foster	PEF	TGF-6	Schedules TOR-1 through TOR-7 of the NFRs, which reflect the total estimated costs for the CR3 Uprate project up to the in-service date (Jon Franke sponsoring portions of TOR-4 and TOR-6 and sponsoring schedules TOR-6A and TOR-7).
John Elnitsky	PEF	JE-1	CONFIDENTIAL - Integrated Project Plan ("IPP") Revision 4 for the LNP

<u>Witness</u>	<u>Proffered By</u>		<u>Description</u>
John Elnitsky	PEF	JE-2	PEF's updated cumulative present value revenue requirements ("CPVRR") calculation for the LNP compared to the cost effectiveness analysis presented in the Need Determination proceedings for Levy Units 1 and 2
John Elnitsky	PEF	JE-3	Florida Legislative Office of Economic and Demographic Research ("EDR") March 2012 Florida Economic Overview
John Elnitsky	PEF	JE-4	Stipulation and Settlement Agreement approved by the Commission in Order No. PSC-12-0104-FOF-EI
John Elnitsky	PEF	JE-5	Nuclear Regulatory Commission ("NRC") review schedule for LNP Combined Operating License Application ("COLA")
John Elnitsky	PEF	JE-6	Updated, graphic illustration of the steps and timing of the PEF LNP COLA review hearing process
John Elnitsky	PEF	JE-7	CONFIDENTIAL – Chart of PEF's long lead equipment ("LLE") purchase order ("PO") disposition status
Jon Franke	PEF	JF-1	NRC acceptance review letter for the Extended Power Uprate ("EPU") License Amendment Request ("LAR") for the CR3 Uprate project

<u>Witness</u>	<u>Proffered By</u>		<u>Description</u>
Jon Franke	PEF	JF-2	IPP Interim Approval 3A (Short Form) for the CR3 Uprate project
Jon Franke	PEF	JF-3	Description of the engineering scope changes for the EPU phase work and a schedule identifying the phased work scope to successfully implement the power uprate for the CR3 Uprate project
Jon Franke	PEF	JF-4	PEF's updated CPVRR analysis for the CR3 Uprate project
Jon Franke	PEF	JF-5	February 2012 EPU Options Update
William R. Jacobs, Jr., Ph.D	OPC	WRJ (PEF)-1	Resume of William R. Jacobs, Jr.
William R. Jacobs, Jr., Ph.D	OPC	WRJ (PEF)-2	Resumes of James P. McGaughy, Jr.
William R. Jacobs, Jr., Ph.D	OPC	WRJ (PEF)-3	CR3 EPU Project Cost Estimates 2006-2012
Joint Testimony of William Coston and Jerry Hallenstein	STAFF	CH-1	Review of Progress Energy Florida, Inc.'s Project Management Internal Controls for Nuclear Plant Uprate and Construction Projects
Jeffery A. Small	STAFF	JAS-1	Auditor's Report re: Progress Energy Florida, Inc., Nuclear Cost Recovery Clause, Levy Nuclear Plant Units 1 & 2 as of December 31, 2011

<u>Witness</u>	<u>Proffered By</u>		<u>Description</u>
Jeffery A. Small	STAFF	JAS-2	Auditor's Report re: Progress Energy Florida, Inc., Nuclear Cost Recovery Clause, Crystal River Unit 3 Uprate as of December 31, 2011

Rebuttal

Jon Franke	PEF	JF-6	Chart summarizing the PEF projected 2013 CR3 Uprate project costs for the following EPU work: (i) license application; (ii) LLE procurement, contractual progress payments and related vendor contract management and quality control; and (iii) design engineering and related project management work
Jon Franke	PEF	JF-7	PEF's CR3 Uprate project schedule for completion of the EPU work

FLORIDA POWER & LIGHT COMPANY

<u>Witness</u>	<u>Proffered By</u>		<u>Description</u>
<u>Direct</u>			
Steven D. Scroggs Winnie Powers	FPL	SDS-1	T- Schedules, Turkey Point 6 & 7 Site Selection and Pre-Construction Costs
Steven D. Scroggs	FPL	SDS-2	Turkey Point 6&7 Licenses, Permits and Approvals
Steven D. Scroggs	FPL	SDS-3	Turkey Point 6 & 7 Procedures and Work Instructions
Steven D. Scroggs	FPL	SDS-4	Turkey Point 6 & 7 Reports

<u>Witness</u>	<u>Proffered By</u>		<u>Description</u>
Steven D. Scroggs	FPL	SDS-5	Turkey Point 6 & 7 Instructions
Steven D. Scroggs	FPL	SDS-6	2011 True-Up Costs Summary Tables
Steven D. Scroggs	FPL	SDS-7	Changes to Turkey Point 6 & 7 SCA Schedule
Steven D. Scroggs Winnie Powers	FPL	SDS-8	Turkey Point 6 & 7 Site Selection and Pre-Construction NFRs
Steven D. Scroggs	FPL	SDS-9	2012 - 2013 Cost Summary Tables
Steven D. Scroggs	FPL	SDS-10	Turkey Point 6 & 7 Project Benefits at a Glance
Nils J. Diaz	FPL	NJD-1	Summary Resume of Nils J. Diaz, PhD.
Nils J. Diaz	FPL	NJD-2	NRC Requirements for Mitigation Strategies for Beyond-Design-Basis External Events at COL Holder Reactor Sites
Winnie Powers	FPL	WP-1	2011 Revenue Requirements
Winnie Powers	FPL	WP-2	2011 Preconstruction Costs
Winnie Powers	FPL	WP-3	2011 Base Rate Revenue Requirements
Winnie Powers	FPL	WP-4	2011 Incremental Labor Guidelines
Winnie Powers	FPL	WP-5	2013 Revenue Requirements
Winnie Powers	FPL	WP-6	2012 & 2013 Base Rate Revenue Requirements
Terry O. Jones Winnie Powers	FPL	TOJ-1	2011 Construction Costs
Terry O. Jones	FPL	TOJ-2	EPU Workforce, Investment, and Cost Recovery Summary

<u>Witness</u>	<u>Proffered By</u>		<u>Description</u>
Terry O. Jones	FPL	TOJ-3	EPPI Index
Terry O. Jones	FPL	TOJ-4	EPU Project Reports 2011
Terry O. Jones	FPL	TOJ-5	St. Lucie Unit 2 Main Transformer
Terry O. Jones	FPL	TOJ-6	St. Lucie Unit 2 Turbine Rotor
Terry O. Jones	FPL	TOJ-7	St. Lucie Plant Pictures
Terry O. Jones	FPL	TOJ-8	Turkey Point Plant Pictures
Terry O. Jones	FPL	TOJ-9	2011 EPU Project Work Activities
Terry O. Jones	FPL	TOJ-10	Equipment placed into service in 2011
Terry O. Jones	FPL	TOJ-11	Plant Change Modification (PCM) Status
Terry O. Jones	FPL	TOJ-12	Extended Power Uprate Schedule
Terry O. Jones	FPL	TOJ-13	Summary of 2011 EPU Construction Costs
Terry O. Jones Winnie Powers	FPL	TOJ-14	EPU NFR Schedules
Terry O. Jones	FPL	TOJ-15	EPU Project Benefits at a Glance
Terry O. Jones	FPL	TOJ-16	EPU Workforce Summary
Terry O. Jones	FPL	TOJ-17	Extended Power Uprate Project Schedule as of April 23, 2012
Terry O. Jones	FPL	TOJ-18	Design, Implementation and Constructability Complexity Examples
Terry O. Jones	FPL	TOJ-19	St. Lucie Unit 2 2012 EPU Scope

<u>Witness</u>	<u>Proffered By</u>		<u>Description</u>
Terry O. Jones	FPL	TOJ-20	Turkey Point Unit 3 2012 EPU Scope
Terry O. Jones	FPL	TOJ-21	Turkey Point Unit 3 2012 Outage Construction Work
Terry O. Jones	FPL	TOJ-22	2012 EPU Project Work Activities
Terry O. Jones	FPL	TOJ-23	EPU Actual/ Estimated 2012 Summary Cost Tables
Terry O. Jones	FPL	TOJ-24	2013 EPU Project Work Activities
Terry O. Jones	FPL	TOJ-25	EPU Projected 2013 Summary Cost Tables
John J. Reed	FPL	JJR-1	Resume of John J. Reed
John J. Reed	FPL	JJR-2	Current Testimony of John J. Reed
John J. Reed	FPL	JJR-3	Total Production Cost of Electricity, 1995-2010
John J. Reed	FPL	JJR-4	Index of the EPU Project's Periodic Meetings
John J. Reed	FPL	JJR-5	Turkey Point 6 & 7 Organization Charts
Steven R. Sim	FPL	SRS-1	Summary of Results from FPL's 2012 Feasibility Analyses of the EPU and Turkey Point 6 & 7 Projects (Plus Results from Additional Analyses)
Steven R. Sim	FPL	SRS-2	Comparison of Key Assumptions Utilized in the 2011 and 2012 Feasibility Analyses of FPL Nuclear Projects: Projected Fuel Costs (Medium Fuel Cost Forecast)

<u>Witness</u>	<u>Proffered By</u>		<u>Description</u>
Steven R. Sim	FPL	SRS-3	Comparison of Key Assumptions Utilized in the 2011 and 2012 Feasibility Analyses of FPL Nuclear Projects: Projected Environmental Compliance Costs (Env II Forecast)
Steven R. Sim	FPL	SRS-4	Comparison of Key Assumptions Utilized in the 2011 and 2012 Feasibility Analyses of FPL Nuclear Projects: Summer Peak Demand Load Forecast
Steven R. Sim	FPL	SRS-5	Projection of FPL's Resource Needs Through 2025
Steven R. Sim	FPL	SRS-6	Comparison of Key Assumptions Utilized in the 2011 and 2012 Feasibility Analyses: Other Assumptions
Steven R. Sim	FPL	SRS-7	The Two Resource Plans Utilized in the 2012 Feasibility Analyses of the EPU Project
Steven R. Sim	FPL	SRS-8	2012 Feasibility Analyses Results for the EPU Project: Total Costs and Total Cost Differentials for All Fuel and Environmental Compliance Cost Scenarios in 2012
Steven R. Sim	FPL	SRS-9	2012 Feasibility Analyses Results for the EPU Project: Percentage of FPL's Fuel Mix from Nuclear, 2011 – 2020 (2011 Actual and 2012 Projections, assuming 0 MW of EPU in the Without EPU Case)

<u>Witness</u>	<u>Proffered By</u>		<u>Description</u>
Steven R. Sim	FPL	SRS-10	The Two Resource Plans Utilized in the 2012 Feasibility Analyses of Turkey Point 6 & 7
Steven R. Sim	FPL	SRS-11	2012 Feasibility Analyses Results for Turkey Point 6 & 7: Total Costs, Total Cost Differentials, and Breakeven Costs for All Fuel and Environmental Compliance Cost Scenarios in 2012
Brian D. Smith	OPC	BDS(FPL)-1	Resume of Brian D. Smith
Brian D. Smith	OPC	BDS(FPL)-2	Turkey Point St. Lucie Savings Allocation
Brian D. Smith	OPC	BDS(FPL)-3	Equation Solved Example
William R. Jacobs, Jr., Ph.D	OPC	WRJ(FPL)-1	Resume of William R. Jacobs, Jr.
William R. Jacobs, Jr., Ph.D	OPC	WRJ(FPL)-2	Resume of James P. McGaughey, Jr.
William R. Jacobs, Jr., Ph.D	OPC	WRJ(FPL)-3	Comparison of PTN EPU to PSL EPU Scope of Work
William R. Jacobs, Jr., Ph.D	OPC	WRJ(FPL)-4	High Bridge Estimate of PTN Cost
William R. Jacobs, Jr., Ph.D	OPC	WRJ(FPL)-5	Turkey Point EPU Costs from 2008 to 2012
Lynn Fisher and David Rich	STAFF	FR-1	Review of Florida Power & Light Company's – Project Management Internal Controls for Nuclear Plant Uprate and Construction Projects.

<u>Witness</u>	<u>Proffered By</u>		<u>Description</u>
Bety Maitre	STAFF	BM-1	Auditor's Report re: Florida Power and Light Company Nuclear Cost Recovery Clause, Nuclear Extended Power Uprate, Twelve Months Ended December 31, 2011
Bety Maitre	STAFF	BM-2	Auditor's Report re: Florida Power and Light Company Nuclear Cost Recovery Clause, Nuclear Extended Power Uprate, Twelve Months Ended December 31, 2011, revised July 12, 2012.
Yen N. Ngo	STAFF	YNN-1	Auditor's report re: Florida Power and Light Company Nuclear Cost Recovery Clause, Turkey Point Plant Units 6 & 7, December 31, 2011.
<u>Rebuttal</u>			
Terry O. Jones	FPL	TOJ-26	Developmental References for FPL's FME Procedure
Terry O. Jones	FPL	TOJ-27	Excerpts of DOE Documents Referred to by Staff
Steven R. Sim	FPL	SRS-12	Summary of Potential Additional Benefits for New Nuclear Capacity If a Renewable Portfolio Standard (RPS) is Imposed: Calculation for EPU Project

<u>Witness</u>	<u>Proffered By</u>		<u>Description</u>
Steven R. Sim	FPL	SRS-13	2011 Feasibility Analysis Results for the EPU Project – Revisited. Total Costs and Total Cost Differentials for All Fuel and Environmental Compliance Cost Scenarios in 2011. Sensitivity Analysis Assuming Higher Cost Estimate
Terry Deason	FPL	TD-1	Biographical Information for Terry Deason
<u>Supplemental</u>			
Terry O. Jones	FPL	TOJ-28	Confidential Agreement
Terry O. Jones	FPL	TOJ-29	St. Lucie Unit 1 License Amendment Request Approval

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

X. PROPOSED STIPULATIONS

There are no proposed stipulations at this time.

XI. PENDING MOTIONS

PEF/FPL: PEF and FPL’s Joint Petition for Variance From or Partial Waiver of Rule 25.0423(5)(c)4, F.A.C.

PEF’s Motion for Deferral of the Determination of the Reasonableness of 2012 and 2013 Projected Construction Expenditures and Associated Carrying Costs and the Approval of the Long-Term Feasibility for the Crystal River Unit 3 Uprate Project and Petition for a Temporary Variance or Waiver of Rule 25-6.0423(5)(c)(2) and (5), F.A.C. on an Emergency Basis (with attached Exhibit A).

XII. PENDING CONFIDENTIALITY MATTERS

PEF:

Document No.	Request	Date Filed
01212-12	First Request for Confidential Classification re Portions of Testimony and Exhibits and Petition Filed as Part of the Company's March 1, 2012 True-Up Filing	3/01/12
02749-12	Second Request for Confidential Classification re Portions of Testimony and Exhibits as Part of the Company's April 30, 2012 Petition for Approval of Costs to be Recovered	4/30/12
03659-12	Third Request for Confidential Classification re Portions of the Auditor's Work Papers in Audit Control No. 12-010-2-2 for the CR3 Uprate Project	6/5/12
03688-12	Fourth Request for Confidential Classification re: Portions of the Documents Responsive to Citizen's First Request for Production of Documents (No. 1)	6/6/12
03852-12	Fifth Request for Confidential Classification re: Portions of Auditor's Work Papers in Audit Control No. 12-010-2-1 for the Levy Nuclear Project	6/13/12
03911-12	Sixth Request for Confidential Classification re: Portions of the Review of the Project Management Internal Controls for Nuclear Plant Uprate and Construction Projects Audit Report No. PA-11-11-004	6/15/12
05121-12	Seventh Request for Confidential Classification re: Portions of PEF's Responses to Staff's First Request for Production	7/31/12
	Eighth Request for Confidential Classification re: Prehearing Statement	8/6/12

FPL:

Request Document No.	Date	Description
05265-12	8/2/12	Motion for temporary protective order [of information included in the supplemental testimony of Terry O. Jones and Ex TOJ-28 (DN 05174-12)]
4510-12	07/06/12	Request for confidential classification of Ex WRJ(FPL)-3 to the testimony of William Jacobs [DN 04511-12]; (OPC's Testimony)
4111-12	06/21/12	Request for confidential classification of Audit No. 12-010-4-2 work papers [DN 04112-12]; (EPU)
4012-12	06/19/12	Request for confidential classification of Audit [Control No.] 12-010-4-1 work papers [DN 04013-12]; (PTN)

3936-12	06/18/12	Motion for temporary protective order [of information included in responses to OPC's 1st request for PODs (No. 4), supplemental]
3932-12	06/15/12	Request for confidential classification of internal controls audit report [DN 03933-12]; (Staff Audit Report)
3829-12	06/12/12	Motion for temporary protective order [of information included in work papers for Audit Nos. 12-010-4-1 (DN 03540-12) and 12-010-4-2 (DN 03593-12)]
3805-12	06/11/12	Request for confidential classification of Errata to SDS-1 and TOJ-14 (Errata)
2821-12	05/02/12	Motion for temporary protective order [of information included in Exhibit TOJ-14 to testimony of Terry Jones and Exhibit SDS-8 to testimony of Steven Scroggs (DN 02674-12)]
2673-12	04/27/12	Request for confidential classification of Exhs SDS-8 and TOJ-14 [DN 02674-12]. (May Filing)
2189-12	04/11/12	Motion for temporary protective order [of information included in responses to OPC's 1st set of interrogatories (No. 3) and 1st request for PODs (Nos. 1-5)]
1242-12	03/01/12	Request for confidential classification of Exhs TOJ-1 and SDS-1 [DN 01243-12]. (March Filing)
1218-12	03/01/12	Motion for temporary protective order [of information included in Exhibit TOJ-1 to prefiled testimony of Terry Jones; and Exhibit SDS-1 to prefiled testimony of Steven Scroggs (DN 01243-12)]
1022-12	02/23/12	First Request for extension of confidential classification of Exh FR-1 [DN 06931-10]

XIII. POST-HEARING PROCEDURES

If no bench decision is made, each party shall file a post-hearing statement of issues and positions. A summary of each position of no more than 120 words, set off with asterisks, shall be included in that statement. If a party's position has not changed since the issuance of this Prehearing Order, the post-hearing statement may simply restate the prehearing position; however, if the prehearing position is longer than 120 words, it must be reduced to no more than 120 words. If a party fails to file a post-hearing statement, that party shall have waived all issues and may be dismissed from the proceeding.

Pursuant to Rule 28-106.215, F.A.C., a party's proposed findings of fact and conclusions of law, if any, statement of issues and positions, and brief, shall together total no more than 50 pages and shall be filed at the same time.

XIV. RULINGS

Opening statements, if any, shall not exceed 10 minutes for PEF and 10 minutes for FPL. All other parties shall have a combined total of 20 minutes to be allocated amongst the parties as they mutually agree.

All opening statements, testimony, and exhibits pertaining to PEF's petition shall be taken up first, followed immediately by all opening statements, testimony and exhibits pertaining to FPL's petition. The exception to this shall concern the testimony (and related exhibits if any) for FPL witness Reed, whose testimony shall be taken on September 5, 2012.

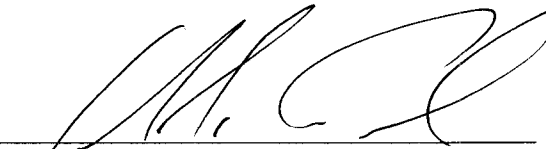
Each witness shall be given 4 minutes to summarize his or her testimony.

FPL's motion to file supplemental testimony is granted.

It is therefore,

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

By ORDER of Commissioner Eduardo E. Balbis, as Prehearing Officer, this 31st day of August, 2012.



EDUARDO E. BALBIS
Commissioner and Prehearing Officer
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Copies furnished: A copy of this document is provided to the parties of record at the time of issuance and, if applicable, interested persons.

MTL

NOTICE OF FURTHER PROCEEDINGS OR JUDICIAL REVIEW

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

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

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