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BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION 07 MAR -9 PM 2: 25

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

DOCKET NO. 060658-EI
Filed: March 9, 2007

COMMISSION
CLERK

PROGRESS ENERGY FLORIDA, INC.'S PREHEARING STATEMENT

Progress Energy Florida, Inc. ("PEF" or the "Company"), pursuant to Order Nos. PSC-07-0048-PCO-EI and PSC-07-0132-PCO-EI, hereby submits its Prehearing Statement in this matter, and states as follows:

A. APPEARANCES

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CMP _____
COM 5
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and

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B. WITNESSES AND EXHIBITS

PEF reserves the right to call such other witnesses and to use such other exhibits as may be identified in the course of discovery and preparation for the final hearing in this matter.

1. WITNESSES

Direct Testimony.

<u>Witness</u>	<u>Subject Matter</u>
Steven M. Fetter	Appropriate standards to be used to judge management decisions and prudence; importance of finality from the standpoint of the investment community; regulatory policy issues; rebuttal to OPC witnesses.
Donna M. Davis	Reasonableness and prudence of PEF coal purchases from 1996-2002; reasonableness and prudence of decisions involving purchase of synfuel for CR4 and CR5 from 1996-2002; openness of PEF's coal procurement process to Commission over period 1996-2002; TECO's purchases of PRB coal during 1996-2002; rebuttal to OPC witnesses.
Albert W. Pitcher	Reasonableness and prudence of PEF coal purchases from 2003-2005; reasonableness and prudence of decisions involving purchase of synfuel for CR4 and CR5 from 2003-2005; 2004 test of PRB coal; rebuttal to OPC witnesses.
Sasha Weintraub	Reasonableness and prudence of PEF coal purchases from 2005-2006; reasonableness and prudence of decisions involving purchase of synfuel for CR4 and CR5 from 2005-2006; Company's assessment of possible use of PRB blends at CR4 and CR5; rebuttal to OPC witnesses.
James N. Heller	Reasonableness and prudence of PEF coal purchases from 1996-2005; the financial effects to customers if PEF had burned PRB blend during 1996-2005; rebuttal to OPC witnesses.
John W. Dean	SO ₂ allowance market; calculation of SO ₂ allowances had PEF burned PRB blend during 1996-2005; rebuttal to OPC witnesses.
Lori Cross	Proper method of interest calculation of any alleged refund; rebuttal to OPC witnesses.
Rod Hatt	Analysis of risks and costs to handle, transport, blend, and burn PRB coal; capital and ongoing operation and

	<p>maintenance costs necessary to blend and burn PRB coal at CR4 and CR5; MW de-rate associated with burning 50/50 PRB blend as compared to 100% bituminous coal; non-monetary considerations regarding switching to PRB coal; prudence of PEF's actions in evaluating use of PRB coal from an operational perspective; rebuttal to OPC witnesses.</p>
Clifford Wayne Toms	<p>Historical operation of CR4 and CR5 as base load units; process used by PEF when considering whether to burn new type of coal in CR4 and CR5; operational concerns with use of PRB coal; rebuttal to OPC witnesses.</p>
J. Michael Kennedy	<p>Environmental air permits for CR4 and CR5 under original certification conditions and Title V; PEF's lack of authority to burn PRB coal at CR 4 and CR 5 prior to Title V permit; environmental air permitting process; effect of the installation of scrubbers at CR4 and CR5 on the use of PRB coal; rebuttal to OPC witnesses.</p>
Jon Franke	<p>General nuclear regulations and requirements to operate CR3 safely; additional considerations and evaluations needed from a nuclear perspective before long-term use of PRB coal; rebuttal to OPC witnesses.</p>
Hub Miller	<p>Necessary evaluations of risks associated with PRB coal to comply with nuclear safety regulations; NRC's treatment of a potential assessment of PRB coal on the same site as CR3; rebuttal to OPC witnesses.</p>
Benjamin J. Crisp	<p>Analysis of total cost of loss of megawatts expected, over the time period 1996-2005, if 50/50 PRB coal blend was burned at CR4 and CR5; rebuttal to OPC witnesses.</p>

Rebuttal Testimony.

James N. Heller	<p>Rebuttal to testimony of Staff witness Bernard M. Windham.</p>
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2. EXHIBITS

<u>Exhibit Number</u>	<u>Witness</u>	<u>Description</u>
SMF-1	Steven M. Fetter	Educational and professional background
DMD-1	Donna M. Davis	Coal procurement policies applicable to coal procurement decisions for CR4 and CR5 during the period of time addressed in my testimony
DMD-2	Donna M. Davis	Representative PFC bidder list from 1996 to 2002
DMD-3	Donna M. Davis	RFP for CR4 and CR5 from 1996 to 2002
DMD-4	Donna M. Davis	Estimated Powder River Basin Origin Transportation Market cost
DMD-5	Donna M. Davis	Composite exhibit of the 1998 RFP response list and Kennecott's declination letter in response to that RFP
DMD-6	Donna M. Davis	May 2001 RFP
DMD-7	Donna M. Davis	Bidder list for the May 2001 RFP
DMD-8	Donna M. Davis	The evaluations of the bid responses to the May 2001 RFP
DMD-9	Donna M. Davis	Dennis Edwards' monthly reports on coal procurement
DMD-10	Donna M. Davis	Report of FERC Form 423 TECO costs for 1996-2005
DMD-11	Donna M. Davis	Cost comparisons with TECO on a generated cost per Kwh basis from 1996 to 2002
DMD-12	Donna M. Davis	Cost comparisons with TECO on a generated cost per million Btu basis from 1996 to 2002
DMD-13	Donna M. Davis	1996 analysis of PRB and bituminous compliance coals

DMD-14	Donna M. Davis	February 9, 1998 memo from Dennis Edwards to Mr. Cumbie
DMD-15	Donna M. Davis	1999 estimate of the cost of PRB coal at Crystal River by 2003
DMD-16	Donna M. Davis	Agendas for the meetings between PFC, PEF, the Commission Staff, and other interested parties, including OPC, regarding PFC's coal procurement activities
DMD-17	Donna M. Davis	Outlines for the meetings between PFC, PEF, the Commission Staff, and other interested parties, including OPC, regarding PFC's coal procurement activities
DMD-18	Donna M. Davis	Composite exhibit of the results of internal audits for the years 1999-2005 with respect to PFC's coal procurement for the Company
DMD-19	Donna M. Davis	Report of FERC Form 423 PEF costs for 1996-2005
DMD-20	Donna M. Davis	Staff comparison of the waterborne costs for PEF, TECO, and Gulf from 1995 to 2000
AWP-1	Albert W. Pitcher	PFC's coal procurement policy in effect when assumed responsibilities
AWP-2	Albert W. Pitcher	PFC's evaluation sheets for bids received in response to July 3, 2003 RFP for CR4 & CR5
AWP-3	Albert W. Pitcher	October 2, 2003 memorandum explaining results of July 3, 2003 RFP and PEF's evaluation of that RFP
AWP-4	Albert W. Pitcher	April 12, 2004 RFP for coal for CR4 and CR5
AWP-5	Albert W. Pitcher	RFP bidder list indicating the bidders who received the April 12, 2004 RFP and whether they responded
AWP-6	Albert W. Pitcher	June 22, 2004 memorandum explaining April 12, 2004 RFP and PFC's evaluation
AWP-7	Albert W. Pitcher	May 13, 2004 test report on PRB sub bituminous and bituminous coals blend at

		CR4 in late April 2004
SAW-1	Sasha A.J. Weintraub	Company's coal procurement policy in effect when SAW assumed responsibility for coal procurement
SAW-2	Sasha A.J. Weintraub	September 2005 RFP for coals for CR4 and CR5
SAW-3	Sasha A.J. Weintraub	Bidder List for September 2005 RFP for coals for CR4 and CR5 identifying who among the recipients of the RFP have responded to it
SAW-4	Sasha A.J. Weintraub	Company's summary evaluation of September 2005 RFP
SAW-5	Sasha A.J. Weintraub	January 2006 RFP for coals for CR4 and CR5
SAW-6	Sasha A.J. Weintraub	Bidder list indicating those suppliers who did or did not respond to January 2006 RFP
SAW-7	Sasha A.J. Weintraub	Company's coal procurement plan for January-February 2006 RFP
SAW-8	Sasha A.J. Weintraub	May 24, 2005 Strategic Engineering Update Report on use of PRB coal at Progress Energy
SAW-9	Sasha A.J. Weintraub	Strategic Engineering May 9, 2005 report on Potential for PRB Coal Use at Progress Energy
SAW-10	Sasha A.J. Weintraub	Strategic Engineering Update Report on Potential for PRB Coal Use at Progress Energy dated June 22, 2005
SAW-11	Sasha A.J. Weintraub	Strategic Engineering Update Report on Potential for PRB Coal Use at Progress Energy dated July 14, 2005
SAW-12	Sasha A.J. Weintraub	Strategic Engineering Update Report on Potential for PRB Coal Use at Progress Energy dated August 18, 2005
SAW-13	Sasha A.J. Weintraub	Financial Evaluation of PRB Coal Use at Progress Energy's Crystal River 4 and 5 Units Report dated August 22, 2005

SAW-14	Sasha A.J. Weintraub	Sargent & Lundy Powder River Basin Coal Conversion Study report for CR4 and CR5 dated October 14, 2005
SAW-15	Sasha A.J. Weintraub	PRB Potential at CRN Plant Update Report dated September 27, 2005
SAW-16	Sasha A.J. Weintraub	Crystal River 5 PRB/CAPP Blend May 2006 Test Report
SAW-17	Sasha A.J. Weintraub	Coal & Energy Price Report dated September 26, 2006
SAW-18	Sasha A.J. Weintraub	Composite Exhibit of Maps showing the domestic coal burning units and the types of coal they burned from 1996 to 2005
JNH-1	James N. Heller	Description of CQIM model
JNH-2	James N. Heller	Graph depicting PRB coal prices
JNH-3	James N. Heller	Graph depicting prices of SO ₂ allowances
JNH-4	James N. Heller	PEF document entitled "Estimated Powder River Basin Origin Market"
JNH-5	James N. Heller	Added capital and operating cost for PRB use at CR4 and CR5
JNH-6	James N. Heller	Summary of PRB delivered and evaluated prices
JNH-7	James N. Heller	Economic analysis of PRB substitution impacts
JNH-8	James N. Heller	Chart of higher costs to customers had PEF burned PRB blend suggested by OPC at CR4 and CR5, together with SO ₂ allowance and de-rate valuations prepared by Dean and Crisp
JNH-9 (rebuttal)	James N. Heller	FERC Form 423 Platts/RDI COALdat Data on coal receipts by various utilities.
JWD-1	John W. Dean	Composite exhibit of two graphs depicting the prices for SO ₂ allowances for the years 1993-2005

JWD-2	John W. Dean	Mr. Sansom's response to Interrogatory Number 18, showing the steps of his SO ₂ damages calculations
JWD-3	John W. Dean	Composite exhibit of excerpts from the Chapter of the AP-42 Manual upon which Mr. Sansom relies
JWD-4	John W. Dean	Chart showing the corrected mathematical calculations of Mr. Sansom's alleged SO ₂ allowance damages
JWD-5	John W. Dean	Composite exhibit of portions of the background document to the AP-42 Manual
JWD-6	John W. Dean	Introduction to the AP-42, Volume I, Fifth Edition
JWD-7	John W. Dean	Composite exhibit of portions of the related Emission Inventory Improvement Program ("EIP") document to the AP-42 Manual
JWD-8	John W. Dean	Chart showing the calculation of SO ₂ allowance damages without the ash savings
JWD-9	John W. Dean	Chart showing the calculation of SO ₂ allowance damages with the adjusted PRB tonnage amounts for 2000, 2001, and 2005
JWD-10	John W. Dean	Chart showing the calculation of SO ₂ allowance damages taking into account all adjustments
LJC-1	Lori J. Cross	A re-calculation of the interest that was originally calculated by Patricia Merchant in her (Revised) Direct Testimony filed on November 1, 2006
RH-1	Rod Hatt	Composite exhibit of two aerial photographs of the Crystal River Energy Complex
RH-2	Rod Hatt	Material Data Sheet regarding PRB sub-bituminous coal

RH-3	Rod Hatt	Composite exhibit of a paper on PRB Coal Degradation – Causes and Concerns and a picture of dusty PRB coal
RH-4	Rod Hatt	Chart reflecting the number of fires and explosions at power plants
RH-5	Rod Hatt	Comparison of the basic coal qualities of bituminous and PRB sub-bituminous coals
RH-6	Rod Hatt	Composite exhibit of examples of various PRB mine fires
RH-7	Rod Hatt	April 2006 article regarding PRB rail derailments
RH-8	Rod Hatt	Summary detailing the capital costs and ongoing operation and maintenance costs necessary to upgrade the Crystal River site to accommodate a PRB coal blend
RH-9	Rod Hatt	Composite exhibit of examples of various fires caused by PRB coal dust
RH-10	Rod Hatt	Description of fire protection guidelines for handling and storing PRB coal that were developed by the PRB Coal Users' Group
RH-11	Rod Hatt	Picture of a roller along a conveyor belt at Crystal River
RH-12	Rod Hatt	Power point presentation regarding the May 2002 conveyor belt fire at the Nanticoke Generating Station
RH-13	Rod Hatt	Composite exhibit of pictures taken along the conveyor belts at Crystal River
RH-14	Rod Hatt	Composite exhibit of pictures of the belts leading to the tripper floor
RH-15	Rod Hatt	Composite exhibit of a presentation regarding stacker reclaimer fires at the Nanticoke Generating Station and examples of other PRB coal yard fires

RH-16	Rod Hatt	Picture taken of the bituminous coal piles at Crystal River
RH-17	Rod Hatt	Picture of a stacker reclaimer at Crystal River
RH-18	Rod Hatt	Composite exhibit of various diagrams of the coal yard conveyor belt system at Crystal River
RH-19	Rod Hatt	Composite exhibit of pictures of the north coal yard at Crystal River
RH-20	Rod Hatt	Picture of a conveyor belt at Crystal River
RH-21	Rod Hatt	Composite exhibit of a picture of the square tripper dust collector at Crystal River
RH-22	Rod Hatt	Composite exhibit of a CD containing a video of an explosion that occurred in a square dust collector at a power plant and pictures showing that explosion
RH-23	Rod Hatt	Composite exhibit of pictures of the damage caused by the J.P. Pulliam tripper floor PRB coal explosion
RH-24	Rod Hatt	Composite exhibit of a picture and article regarding the PRB coal explosion at the State Line Power Plant
RH-25	Rod Hatt	Composite exhibit of examples of PRB coal fires occurring in silos
RH-26	Rod Hatt	Test report from the 2004 test burn conducted at CR4
CWT-1	Clifford Wayne Toms	Aerial map of the Crystal River Energy Complex
CWT-2	Clifford Wayne Toms	Original Babcock & Wilcox boiler design documents for CR4 and CR5
JMK-1	J. Michael Kennedy	Copy of the Conditions of Certification for CR4 and CR5

JMK-2	J. Michael Kennedy	Copy of the Conditions to Approval
JMK-3	J. Michael Kennedy	Opinion letter regarding the enforceability of the long-term Massey contract and the transmittal letter to the DEP
JMK-4	J. Michael Kennedy	Initial stack test performed at CR4 using bituminous coal
JMK-5	J. Michael Kennedy	Proof of publication of the public notice of intent to issue Title V air operation permit
JMK-6	J. Michael Kennedy	Final Determination regarding PEF's Title V permit modification request, including proof of publication of the public notice of intent regarding the same
JMK-7	J. Michael Kennedy	PEF's application for an air construction permit for a short-term trial burn of a sub-bituminous/bituminous mixture
JMK-8	J. Michael Kennedy	Notice of Final Permit for the short-term test burn of PRB coal blend at CR4 and CR5
JF-1	Jon Franke	Aerial photograph of the Crystal River site
JF-2	Jon Franke	Composite exhibit of pictures of the barge unloader, which were taken from various places at CR3
JF-3	Jon Franke	Composite exhibit of pictures of various points along the conveyor belt that would transport PRB coal, which were taken from CR3
JF-4	Jon Franke	Picture taken of CR3 from the tripper floor at CR4
JF-5	Jon Franke	Picture taken of CR3 from a conveyor belt that would transport the PRB coal
JF-6	Jon Franke	Diagram of the transmission lines that provide power to the CR3 nuclear unit
JF-7	Jon Franke	Composite exhibit of pictures of transmission lines at Crystal River as they cross over the conveyor belts

JF-8	Jon Franke	Analysis of the steps taken to evaluate a proposed change at a nuclear facility
JF-9	Jon Franke	List of the risks that would require analysis pursuant to the CR3 operating license before significant quantities of PRB coal could be brought onto the Crystal River site
JBC-1	John Ben Crisp	Babcock & Wilcox Company design documents for the boilers for CR4 and CR5
JBC-2	John Ben Crisp	The Company's 1995 TYSP
JBC-3	John Ben Crisp	Composite exhibit of Schedule 1, Existing Generation Facilities, to the Company's TYSPs for the years 1996 to 2005
JBC-4	John Ben Crisp	PEF's daily total load forecast with the generation
JBC-5	John Ben Crisp	Cost estimate for the two-year "bridge" contract costs and remaining eight-year system costs following the construction of a peaking unit to replace the lost 124MW from the CR4 and CR5 de-rates over the ten-year period of time
JBC-6	John Ben Crisp	Summary of my calculation of the range of costs the Company would have incurred to replace 124MW of base load capacity over the time frame from 1996 to 2005
Composite Exhibit		Excerpts from Deposition Transcript of Staff Witness Bernard M. Windham, taken March 1, 2007, pages 53-54, 58-59, and 130-131
Composite Exhibit		All discovery responses, including interrogatory responses and documents produced in response to requests to produce, submitted by OPC, AARP, and Staff in this matter, regardless of the party propounding the discovery

C. PEF'S STATEMENT OF BASIC POSITION

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

PEF presented, and this Commission approved, all of the fuel costs during prior fuel cost recovery clause proceedings for each of the last ten years, which are questioned now by OPC. In each proceeding, OPC, Staff, and others have been provided information on exactly the type of coal purchased and what it cost at all of the Company's coal units including CR4 and CR5. The Commission Staff admittedly received and collected such information from other Florida and out-of-state utilities. PEF provided additional information regarding its coal purchases and costs in discovery, when asked for it, and the Company and Progress Fuels Corporation (PFC) routinely met with Staff, OPC, and others to explain the coal procurement strategies and decisions for CR4 and CR5. The Company has been an open book with respect to its coal procurement process and decisions over the past decade. No one believed the Company's coal procurement decisions fell outside the range of reasonable business judgment with respect to the issue of PRB coal blends at CR4 and CR5 compared to the decisions the Company made for coal at CR4 and CR5.

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

material information, which does not exist here, there is no basis in law or policy for the Commission to re-visit its prior orders in the fuel clause proceedings over the past decade. Such a result is fundamentally unfair to the Company under principles of retroactive ratemaking, administrative finality, and due process.

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

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

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

Additionally, despite the fact that the boilers were designed to accommodate an equal blend of PRB and bituminous coals in the late 70's the design and construction of the units lack the

necessary equipment to safely, efficiently, and effectively handle and operate the units on an equal blend of PRB coals and bituminous coals. One cannot reasonably dispute, for example, the reasonable business judgment to add fire detection and suppression equipment and devices that do not exist at CR4 and CR5, for example, as part of any consideration of handling and burning a PRB coal and bituminous coal blend at CR4 and CR5. For all these reasons, tens of millions of dollars in capital and maintenance upgrades must be made for the units to burn this blend safely and effectively. The Company must further evaluate the impact of any decision to bring PRB coals on site for a PRB and bituminous coal blend, as OPC suggests, on the operation of the Company's nuclear unit CR3, given the proximity of the PRB coals to the unit and the undisputed characteristics of PRB coals. Were PEF to use PRB blends, as OPC suggests, CR3 would be the only nuclear unit in the United States, and quite possibly the world, that is co-located with a PRB coal plant. These are facts that are not accounted for at all by OPC and, by any measure of reasonable business judgment, add to the cost of considering a fuel switch to PRB coal and bituminous blends.

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

OPC's Petition should be denied in its entirety.

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

D. PEF'S STATEMENT OF FACTUAL ISSUES AND POSITIONS¹

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

PEF: Yes, as reflected in the testimony and exhibits filed in this matter, and as explained in PEF's statement of basic position.

Witnesses: Davis, Pitcher, Weintraub, Heller, Dean, Hatt, Toms, Kennedy, Franke, Miller, Crisp.

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

PEF: No. The fuel costs questioned by OPC were presented and approved by the Commission during prior fuel cost recovery clause proceedings for each of the last ten years. In each proceeding, OPC, Staff, and others have been provided information on exactly the type of coal purchased and what it cost at all of the Company's coal units including CR4 and CR5. The Commission Staff admittedly received and collected such information from other Florida and out-of-state utilities. PEF provided additional information regarding its coal purchases and costs in discovery, when asked for it, and the Company and Progress Fuels Corporation (PFC) routinely met with Staff, OPC, and others to explain the coal procurement strategies and decisions for CR4 and CR5. The Company has been an open book with respect to its coal procurement process and decisions over the past decade. No one believed the Company's coal procurement decisions fell outside the range of reasonable business judgment with respect to the issue of PRB coal blends at CR4 and CR5 compared to the decisions the Company made for coal at CR4 and CR5.

During these fourteen (14) fuel clause proceedings over the past decade the Commission Staff and Commission reviewed and approved for collection millions of dollars in fuel costs, including the costs of coal procured and burned at CR4 and CR5, from PEF's customers. No one can reasonably suggest that there was no determination that such costs were reasonable and prudent before PEF was allowed to collect them from customers. Indeed, at no time has the Commission even entertained a separate proceeding to determine prudence beyond the fuel clause proceedings themselves. Any decision by the Commission to re-visit its prior orders on the allegations in this proceeding, therefore, will undermine the

¹ Pursuant to Order No. PSC-07-0191-PCO-EI, issued March 2, 2007, PEF will be submitting, on March 12, 2007, its memorandum providing rationale against any other proposed issues that have been identified thus far by the parties. PEF reserves the right to submit an amended prehearing statement to provide a position on any additional issues which are included in the proceeding after the filing of this original prehearing statement.

regulatory certainty the Commission and utilities now enjoy to the detriment of the utility and the ratepayer who will undoubtedly face higher costs as a result. Such a decision will also unnecessarily bog down the current fuel proceedings with more and more information as utilities speculate on what information will be considered important to the Commission, OPC, and others to ensure that utility management decisions are not questioned years later. The fuel proceedings do not currently work this way and there is no need for them to change. As a result, absent some proof of concealment of material information, which does not exist here, there is no basis in law or policy for the Commission to re-visit its prior orders in the fuel clause proceedings over the past decade. Such a result is fundamentally unfair to the Company under principles of retroactive ratemaking, administrative finality, and due process.

Witnesses: Fetter, Davis, Pitcher, Weintraub.

ISSUE 3: If the Commission determines that PEF should be required to refund customers for coal purchased to run Crystal River Units 4 and 5, what amount should be refunded?

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

Witnesses: Davis, Pitcher, Weintraub, Heller, Cross, Hatt, Crisp.

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

PEF: If the Commission determines that PEF should be required to make a refund to customers, the amount should be refunded to customers through the fuel cost recovery clause over the same period of time for which the excess charges are alleged to have occurred. The balance of the refund not paid to customers should accrue interest at the 30 day commercial paper rate

Witnesses: Cross.

E. PEF'S STATEMENT OF LEGAL ISSUES AND POSITIONS

See Issue 2 above, which is a mixed issue of law and fact. In addition:

ISSUE 1L: Is the Commission barred, by the prohibition against retroactive ratemaking, from requiring PEF to refund coal purchased to run Crystal River Units 4 and 5 during the time period of 1996-2005?

PEF: Yes. The fuel costs questioned by OPC were presented and approved by the Commission during prior fuel cost recovery clause proceedings for each of the last ten years. In each proceeding, OPC, Staff, and others have been provided information on exactly the type of coal purchased and what it cost at all of the Company's coal units including CR4 and CR5. The Commission Staff admittedly received and collected such information from other Florida and out-of-state utilities. PEF provided additional information regarding its coal purchases and costs in discovery, when asked for it, and the Company and Progress Fuels Corporation (PFC) routinely met with Staff, OPC, and others to explain the coal procurement strategies and decisions for CR4 and CR5. The Company has been an open book with respect to its coal procurement process and decisions over the past decade. No one believed the Company's coal procurement decisions fell outside the range of reasonable business judgment with respect to the issue of PRB coal blends at CR4 and CR5 compared to the decisions the Company made for coal at CR4 and CR5.

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

ISSUE 2L: Is the Commission barred, by the principle of impermissible hindsight review, from requiring PEF to refund coal purchased to run Crystal River Units 4 and 5 during the time period of 1996-2005?

PEF: Yes. It is undisputed that the Commission must judge PEF's coal procurement decisions based on the information available to management at the time the decision was made, without the benefits of knowledge acquired after the decision. OPC's Petition was filed as a result of a hindsight question about what

PEF should have done in the past based on what it was doing currently, namely, investigating the propriety of a coal switch from bituminous coals at CR4 and CR5 to a blend of PRB coals and bituminous coals. While OPC claims that it is not relying on after-the-fact information in its testimony the reliance on hindsight review is unavoidable. OPC, for example, questions why design changes were not made or challenged, why test burns were not conducted earlier than they were, and why environmental permits were not changed when they were filed, all in the 1980's and early 1990's because of allegedly lower cost PRB coals in 1996 and later that OPC alleges PEF should have purchased. These are examples of impermissible hindsight review and OPC's petition and testimony are replete with them. If a refund is required, as OPC alleges, it would place an impossible burden on PEF's management – the ability to foresee the future. The purpose of not allowing hindsight review is to relieve this burden. The Commission cannot second guess management decisions and that is what OPC asks this Commission to do.

ISSUE 3L: Is the Commission barred, by the principle of administrative finality, from requiring PEF to refund coal purchased to run Crystal River Units 4 and 5 during the time period of 1996-2005?

PEF: Yes. The fuel costs questioned by OPC were presented and approved by the Commission during prior fuel cost recovery clause proceedings for each of the last ten years. In each proceeding, OPC, Staff, and others have been provided information on exactly the type of coal purchased and what it cost at all of the Company's coal units including CR4 and CR5. The Commission Staff admittedly received and collected such information from other Florida and out-of-state utilities. PEF provided additional information regarding its coal purchases and costs in discovery, when asked for it, and the Company and Progress Fuels Corporation (PFC) routinely met with Staff, OPC, and others to explain the coal procurement strategies and decisions for CR4 and CR5. The Company has been an open book with respect to its coal procurement process and decisions over the past decade. No one believed the Company's coal procurement decisions fell outside the range of reasonable business judgment with respect to the issue of PRB coal blends at CR4 and CR5 compared to the decisions the Company made for coal at CR4 and CR5.

During these fourteen (14) fuel clause proceedings over the past decade the Commission Staff and Commission reviewed and approved for collection millions of dollars in fuel costs, including the costs of coal procured and burned at CR4 and CR5, from PEF's customers. No one can reasonably suggest that there was no determination that such costs were reasonable and prudent before PEF was allowed to collect them from customers. Indeed, at no time has the Commission even entertained a separate proceeding to determine prudence beyond the fuel clause proceedings themselves. Any decision by the Commission to re-visit its prior orders on the allegations in this proceeding, therefore, will undermine the regulatory certainty the Commission and utilities now enjoy to the detriment of

the utility and the ratepayer who will undoubtedly face higher costs as a result. Such a decision will also unnecessarily bog down the current fuel proceedings with more and more information as utilities speculate on what information will be considered important to the Commission, OPC, and others to ensure that utility management decisions are not questioned years later. The fuel proceedings do not currently work this way and there is no need for them to change. As a result, absent some proof of concealment of material information, which does not exist here, there is no basis in law or policy for the Commission to re-visit its prior orders in the fuel clause proceedings over the past decade. Such a result is fundamentally unfair to the Company under principles of retroactive ratemaking, administrative finality, and due process.

F. PEF'S STATEMENT OF POLICY ISSUES AND POSITIONS

See Issue 2 above, which is a mixed issue of policy and fact. In addition:

ISSUE 1P: Should the Commission limit the amount of time it can look back, to an issue regarding a utility's fuel costs, to when the utility is first put on notice of that issue?

PEF: Yes. The fuel costs questioned by OPC were presented and approved by the Commission during prior fuel cost recovery clause proceedings for each of the last ten years. In each proceeding, OPC, Staff, and others have been provided information on exactly the type of coal purchased and what it cost at all of the Company's coal units including CR4 and CR5. The Commission Staff admittedly received and collected such information from other Florida and out-of-state utilities. PEF provided additional information regarding its coal purchases and costs in discovery, when asked for it, and the Company and Progress Fuels Corporation (PFC) routinely met with Staff, OPC, and others to explain the coal procurement strategies and decisions for CR4 and CR5. The Company has been an open book with respect to its coal procurement process and decisions over the past decade. No one believed the Company's coal procurement decisions fell outside the range of reasonable business judgment with respect to the issue of PRB coal blends at CR4 and CR5 compared to the decisions the Company made for coal at CR4 and CR5.

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G. STIPULATED ISSUES

Per discussions with counsel for OPC, PEF believes that the issue of how interest on any refund should be calculated can be stipulated. This would eliminate the need for PEF to present the testimony of Lori J. Cross as well as the need for OPC to present the testimony of Patricia Merchant at hearing.

H. PENDING MATTERS

<u>Motion</u>	<u>Filing Date</u>
PEF's Request for Commission to consider testimony of James N. Heller out of order at final hearing in docket.	3/5/2007
PEF's Motion to Strike or, alternatively, motion in limine to exclude testimony of Bernard Windham	2/20/2007
PEF's Request for oral argument on motion to strike or, alternatively, motion in limine to exclude testimony of Bernard Windham	2/20/2007

I. PENDING REQUESTS FOR CONFIDENTIAL TREATMENT

<u>Request or Notice of Intent to Seek Confidential Classification</u>	<u>Filing Date</u>
PEF's Motion for Temporary Protective Order	3/1/2007
PEF's Request for Confidential Classification	1/16/2007
PEF's Request for Confidential Classification	12/18/2006
PEF's Request for Confidential Classification	12/11/2006

J. REQUIREMENTS OF THE PREHEARING ORDER THAT CANNOT BE MET

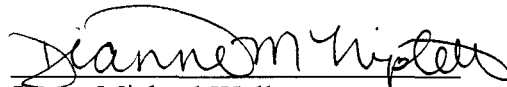
Because discovery is continuing in this matter, PEF must reserve the right to use witnesses and exhibits other than or different from those identified hereinabove, in order to respond to ongoing developments in the case.

K. OBJECTIONS TO WITNESSES' QUALIFICATIONS

None.


Respectfully submitted this 9th day of March, 2007.

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished via U.S. Mail this 9th day of March, 2007 to all parties of record as indicated below.


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