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ATTORNEYS AT LAW

August 27, 2007

Hon. Ann Cole  
Commission Clerk  
Florida Public Service Commission  
2450 Shumard Oak Blvd.  
Tallahassee, FL 32399-0850

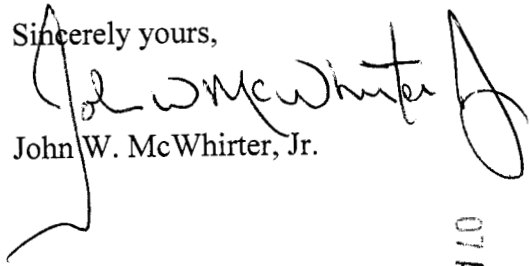
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In Re Docket No 070052-EI.

Dear Ms. Cole:

Enclosed for filing in the above docket are an original and fifteen copies of the prefiled FIPUG's Brief and Position Statement in above styled matter.

Sincerely yours,

  
John W. McWhirter, Jr.

CMP \_\_\_\_\_  
COM \_\_\_\_\_  
CTR \_\_\_\_\_  
ECR \_\_\_\_\_  
GCL 2 \_\_\_\_\_  
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**BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION**

Petition for cost recovery through the ) Docket No.: 070052-EI  
fuel clause, by Progress Energy Florida ) Filed August 28, 2007

**FLORIDA INDUSTRIAL POWER USERS  
POST HEARING BRIEF**

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## STATEMENT OF FACTS AND THE CASE

### THE CASE

This case began with a petition for a determination of need to add 180MW of capacity to an existing nuclear plant under the provisions of §403.519 *Florida Statutes*. PEF incorporated within its petition an unusual request. It requests the Commission to order that any costs PEF allocates to construct the 180MW addition be considered fuel expense. This will lock in future fuel cost surcharge increases to cover the capital costs before any money is spent. Advocates for consumers all supported the need for the improvement without the need to seek bids, but took the position that recovering capital costs as though they were a fuel expense was premature and unjustified in a need determination case. The Commission determined that it would hear the two matters separately. On February 8, 2007 it determined that an 180MW capacity improvement to CR#3 was needed by order NO. PSC-07-0119-FOF-EI. This brief addresses the cost recovery aspect of the petition.

### THE FACTS

**The Shareholder:** Progress Energy of Florida (PEF) is a regulated public utility that operates as a wholly owned subsidiary of Progress Energy, Inc (PGN), a public utility holding company conglomerate headquartered in Raleigh, N.C. The common stock of PEF is not held by members of the general public, it is owned by one entity, PGN.

**The CR#3 Nuclear Plant:** The regulated utility built an 890 MW nuclear plant (CR#3) in 1977 near Crystal River Florida. The nuclear plant is partially owned by other utilities. The plant is ending the period for which it was licensed to operate. It must be renovated and re-permitted to continue in operation.

PEF reports in its current 10 year site plan filed in FPSC Docket 070000 that CR#3 has an available summer capacity of 769MW.<sup>1</sup> In its petition in this docket, 070052-EI, it claims the plant has a capacity of 900 MW. The 14.56% difference between the capacities reported in the uprate petition

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<sup>1</sup> Exhibit 21 2007 ten year site plan Schedule 1

and in the ten year site plan apparently represents the portion of the plant owned by or dedicated to other utilities. The petition alleges that the nuclear capacity of CR#3 will be increased from 900 to 1080 MW in three phases making CR#3 the largest power plant in the state.

**The Project:** The estimated cost to be allocated to 180 MW of the 1080MW renovation is \$440 million.<sup>2</sup> PEF seeks approval to collect this amount from retail customers. This 180 MW portion of the renovation is called the “nuclear uprate.”

As stated in the statement of the case, the petition requests the Commission to make an advance binding determination that PEF may increase its fuel cost recovery surcharge by the carrying costs<sup>3</sup> relating to the capital investment in the 180 MW CR#3 capacity addition. The recovery method is to be approved before the plant is in use and useful service. The petition says “future filings in the Fuel and Purchase Power Cost Recovery Docket will allow for Commission review of projected costs as well as the prudence of costs already expended.” The prehearing order divided the “nuclear uprate” into three phases and numerous sub phases, but all listed items are non fuel capital expenditures.

There is no material dispute over the fact that the enumerated capital expenditure items are the type of expense that is normally collected through base rates.

**The 2005 rate increase/rate freeze order:** On September 28, 2005 the Commission rendered order PSC-05-0945-S-EI in Docket 050078 (attached as Appendix 1 to this brief). The order approved a settlement stipulation between PEF and consumers. The stipulation and order allowed automatic base rate increases for Hines #2 & 4 beginning in 2008. This rate increase is estimated to be around \$90 million beginning in January 2008. After providing for the \$90 million base rate increase the stipulation froze all other base rates until January 2010. It specifically said:

**“During the term of this agreement, except as otherwise provided in this agreement, or except for unforeseen extraordinary costs imposed by government agencies relating to safety or matters of national security, PEF will not petition for any new surcharges, on an interim or permanent basis, to recover costs that are of a type that traditionally and**

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<sup>2</sup> TR 266 line 24 Portuando testimony.

<sup>3</sup> The principal carrying costs related to a capital investment are: 1) a depreciation charge designed to allow the investor to recover the money invested over time, 2) interest on the money borrowed to fund the project and 3) a return on the money PGN invests in the project while it is waiting to recover the investment through the depreciation charge.

**historically would be, or are presently, recovered through base rates.” (Order 05-0945 page 2)**

**The Need for the 180 MW Capacity Addition:** In April 2005 shortly before the 2005 rate case was filed, PEF filed its ten year site plan setting out the power plants it said it needed to build to provide reliable electric service. For the near term, which is the subject of this case, the construction plan has changed dramatically<sup>4</sup>. In 2005 PEF planned to build 1428 MW of new capacity between 2009 and 2012 to meet the need for reliability. The plant additions would be funded through base rates. In April 2007, after the Commission approved base rate freeze in Order 05-0945, PEF filed a new ten year site plan. The plan changed. It now plans to add 891 MW of new capacity, but says only 711 is needed for reliability, 180 is for “economy”. The economy will be achieved by reducing the output from other generation. The fuel savings calculation to derive the economic benefit of the CR#3 uprate disregards the capacity cost attributable to the idled capacity. Simply stated PEF says it is “economical” to pay for capacity and then duplicate that capacity with a generator that burns less expensive fuel.

The generating plant that PEF says it needs in the near term to meet growing electric demand has decreased by over 50% for the period between 2009 and 2012. On the other hand demand is forecasted to grow.

In the spring of 2005 PEF forecasted that its retail summer peak demand would be 8,599 MW growing to 9,988 MW by 2012.<sup>5</sup> In April of this year PEF projected that its 2012 summer peak retail demand will be 10,511 MW.

PEF’s current 2007 ten year site plan expects the demand growth will be 22% greater than it forecasted 2 years ago. It has responded to this anticipated growth in demand by cutting back its generation construction plans by 50%.

PEF’s 2007 plan replaces 502 MW of planned construction with purchased power.

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<sup>4</sup> Table I

<sup>5</sup> Table II



Extracts from the exhibits showing these changes are set out below.<sup>6</sup>

**TABLE I**  
**NEAR TERM CONSTRUCTION PLANNING**  
**2005**

PROGRESS ENERGY FLORIDA

SCHEDULE B  
 PLANNED AND PROSPECTIVE GENERATING FACILITY ADDITIONS AND CHANGES

AS OF JANUARY 1, 2004 THROUGH DECEMBER 31, 2014

(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)	(10)	(11)	(12)	(13)	(14)	(15)	(16)
PLANT NAME	NO.	(COUNTY)	TYPE	FUEL		FUEL TRANSPORT		START	SERVICE	RETIREMENT	NAMEPLATE	NET CAPABILITY		STATUS	NOTES
				PRI	ALT.	PRI	ALT.					MO./YR	MO./YR		
HINES ENERGY COMPLEX	5	POLK	CC	NG	DFO	PL	TK	5/2007	12/2009			476	548	P	
HINES ENERGY COMPLEX	6	POLK	CC	NG	DFO	PL	TK	5/2008	12/2010			476	548	P	
COMBINED-CYCLE	1	UNKNOWN	CC	NG	DFO	PL	UN	10/2009	5/2012			476	548	P	

**2005 New construction planned for reliability**  
**2007**

**1,428MW**

CRYSTAL RIVER	5	CITRUS	ST					04/2009				(30)	(30)	D	(2)
CRYSTAL RIVER	5	CITRUS	ST					05/2009				10	10	A	(3)
BARTOW	1-3	PINELLAS	ST						08/2009			(444)	(464)	RP	(4)
BARTOW	1	PINELLAS	CC	NG	DFO	PL	WA	12/2006	06/2006			1199	1279	RP	(4)
CRYSTAL RIVER	3	CITRUS	ST					12/2009				40	40	A	(2)
CRYSTAL RIVER	4	CITRUS	ST					04/2010				(30)	(30)	D	(2)
HINES	1	POLK	CC					06/2011				35	0	A	(3)
CRYSTAL RIVER	3	CITRUS	ST					12/2011				140	140	A	(3)
CRYSTAL RIVER	1	CITRUS	ST					03/2012				11	11	A	(3)

**2007 New construction planned**

**891 MW**

**Less CR #3**

**140**

**2007 Plant for reliability**

**711 MW**

See next page for demand growth projections.

<sup>6</sup> Table III

TABLE II

NEAR TERM DEMAND GROWTH PROJECTIONS:

PROGRESS ENERGY FLORIDA

SCHEDULE 3.1.1

HISTORY AND FORECAST OF SUMMER PEAK DEMAND (MW)  
BASE CASE

(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)	(OTH)	(10)
YEAR	TOTAL	WHOLESALE	RETAIL	INTERRUPTIBLE	RESIDENTIAL LOAD MANAGEMENT	RESIDENTIAL CONSERVATION	COMM. / IND. LOAD MANAGEMENT	COMM. / IND. CONSERVATION	OTHER DEMAND REDUCTIONS	NET FIRM DEMAND
<b>2005</b>										
2005	9,547	948	8,599	633	258	203	38	167	75	8,172
2006	9,808	993	8,815	620	228	214	39	169	75	8,663
2007	10,085	1,063	9,022	417	202	223	40	171	75	8,957
2008	10,298	1,093	9,205	413	179	232	41	172	75	9,186
2009	10,452	1,063	9,388	409	158	241	42	174	75	9,333
2010	10,802	1,213	9,589	400	140	250	43	176	75	9,719
2011	11,007	1,217	9,790	401	124	259	43	177	75	9,926
2012	11,214	1,230	9,984	402	109	269	46	179	75	10,138
Est. Demand growth 1,389 MW. Between 2005 and 2012 for retail demand										
<b>2007</b>										
2007	10,658	1,321	9,337	449	319	243	43	168	110	9,327
2008	10,927	1,337	9,590	473	332	259	52	177	110	9,525
2009	11,010	1,192	9,818	474	331	275	61	185	110	9,553
2010	11,318	1,269	10,049	479	372	292	70	194	110	9,801
2011	11,569	1,287	10,282	484	393	308	80	203	110	9,992
2012	11,807	1,296	10,511	485	414	325	89	211	110	10,173
Est. Demand growth 1,912 MW. Between 2005 and 2012 for retail demand under the current plan.										

See next page for purchased power plans

TABLE III

NEAR TERM PURCHASED POWER PLAN

**TABLE III**  
**NEAR TERM PURCHASED POWER PLAN**

SCHEDULE 7.1

FORECAST OF CAPACITY, DEMAND AND SCHEDULED MAINTENANCE  
AT TIME OF SUMMER PEAK

(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)
	TOTAL INSTALLED CAPACITY	FIRM CAPACITY IMPORT	FIRM CAPACITY EXPORT	QF	TOTAL CAPACITY AVAILABLE	SYSTEM FIRM SUMMER PEAK DEMAND	RESERVE MARGIN BEFORE MAINTENANCE	
<u>YEAR</u>	<u>MW</u>	<u>MW</u>	<u>MW</u>	<u>MW</u>	<u>MW</u>	<u>MW</u>	<u>MW</u>	<u>% OF PEAK</u>
2005	8,332	799 *	0	820	9,951	8,173	1,778	22%
2006	8,848	767 *	0	820	10,435	8,663	1,772	20%
2007	8,848	1,087	0	802	10,737	8,958	1,779	20%
2008	9,309	1,087	0	787	11,183	9,187	1,996	22%
2009	9,309	1,087	0	787	11,183	9,353	1,830	20%
2010	9,785	1,098	0	787	11,670	9,719	1,951	20%
2011	10,261	1,028	0	787	12,076	9,926	2,150	22%
2012	10,737	1,028	0	787	12,552	10,138	2,414	24%

In 2005 PEF projected the need for 1028 MW of firm capacity import to meet its summer demand

**2007 Projections**

2007	8,701	1,561 *	0	803	11,165	9,327	1,838	20%
2008	9,175	1,503 *	0	799	11,477	9,525	1,952	20%
2009	9,881	1,095	0	659	11,635	9,553	2,082	22%
2010	9,891	1,253	0	775	11,919	9,801	2,118	22%
2011	9,926	1,370	0	775	12,071	9,992	2,079	21%
2012	10,077	1,530	0	775	12,382	10,173	2,209	22%

In 2007 PEF now projects a need for 1530 MW of firm import capacity to meet its summer demand. New Plant construction is replaced with 502 MW of purchased power.

## SUMMARY OF ARGUMENT

This case is a classic example of how public utility holding companies can use accounting to turn regulatory lemons into lemonade for its self to the detriment of its captive customers.

PEF requested a base rate increase in January 2005, Docket 050028-EI. In April it followed with its annual 10 year site plan that supported the need for a base rate increase by showing among other things that it planned to build 1428 MW of new capacity by 2012. (Table I). The rate case was settled after good faith negotiations. The settlement postponed the base rate increase from 2006 to 2008<sup>7</sup> when base rates would go up by \$90 million. It then agreed that there would be no additional base rate increases until January 1, 2010. During the interim according to the settlement:

- “..., *PEF will not petition for any new surcharges to recover costs that traditionally would be, or are presently, recovered through base rates.* (Paragraph 4)” PSC-05-0945-S-EI in Docket 050078 ( emphasis added)

The petition in this case blatantly disregards the utility’s 2005 promise to its customers, memorialized in Order 05-0945 that it wouldn’t seek cost recovery for base rate items.

PEF exacerbated its broken promise by dropping the plans to build Hines 5 & 6 with base revenues. It now meet reliability needs with purchased power using the guaranteed capacity cost recovery clause. This frees up base rates for additional profit. Customers will be charged for this capacity even when it is idled, but the fact that it has been contracted for to meet reliability needs allows PEF to claim that the CR#3 uprate is for economic purposes and claim cost recovery clause for it as well. (if you disregard the fact that customers have to pay for two power plants instead of one). The “economy” claim has a hollow ring when the underlying facts are examined. Cancelling planned power plants in favor of risk free off system purchased power financed with guaranteed cost recovery surcharges passed along to customers just to reduce corporate risk and increase profits is not in the public interest.

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<sup>7</sup> Attachment 1

## ARGUMENT

### ISSUE 1:

#### **SHOULD THE COMMISSION AUTHORIZE CLAUSE RECOVERY?**

Issue I in the prehearing order is broken down into subparts addressing a number of the items on PEF's cost recovery wish list, but the principal to be decided is whether PEF should recover its investment in the 180 MW capacity additions to CR#3 through base rates, through the fuel clause or some other clause recovery mechanism. The subparts of Issue 1 are covered in FIPUG's post hearing position statement which is incorporated by reference in this brief.

Consumer intervenors say clause recovery is a bad idea. They contend that to justify a rate increase for the CR#3 uprate capital expenditures PEF should be first be required to allocate the capital costs correctly to the wholesale and retail customers. They further contend that looking at the uprate through the base rate window is the fair way to proceed. The base rate window enables the Commission to see if:

- 1) the \$400 million PEF is collecting from customers each year through its current depreciation charges<sup>8</sup> plus;
- 2) the \$ 90 million a year in additional money that will be derived from the forthcoming Hines # 2 & 4 automatic increase;<sup>9</sup> combined with;
- 3) the \$ 250 million a year new revenue that will come from 6,905 Gwh growth in retail sales<sup>10</sup> PEF anticipates between now and the date when CR#3 uprate goes into commercial operation will be sufficient to cover its operating expenses and afford a fair return on its overall rate base. As an added benefit the Commission will be able to comply with the requirements of § 366.06 *Florida Statutes* and withhold authorizing a rate increase until the CR#3 uprate is in use and useful service.

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<sup>8</sup>2006 Surveillance report Exhibit 16 schedule 2 page 2

<sup>9</sup> Order PSC 05-0945 --S-EI

<sup>10</sup> Exhibit 21, 2007 ten year site plan schedule 3.3.1

The alternative sought by PEF is for the Commission to use tunnel vision. The Commission is asked to look only at this specific investment and pass its cost directly through to customers irrespective of everything else going on that affects the utility's financial health and profitability.

Under Florida Law and general regulatory principals the Commission has the duty to prescribe fair and reasonable rates, § 366.05 *Florida Statutes*, regulated electric utilities are entitled to earn a fair and reasonable return. The law is explained in Gulf Power vs. Bevis, 296 So2d 482 (Fla 1974) and Fed. Power Com. v. Hope Nat. Gas Co. (1944), 320 U.S. 591, 64 S.Ct. 281, 88 L.Ed. 333, which said

' . . . it is important that there be enough revenue not only for operating expenses but also for the capital costs of the business. These include service on the debt and dividends on the stock . . . '

FIPUG supports this proposition and would do nothing to endanger the financial responsibility of PEF, but it prays that the Commission will follow the well established system in place to insure that a mutually fair and reasonable return is achieved.

**What exactly is PEF asking the Commission to approve in advance?** PEF bases its rate increase in this docket on a series of orders beginning in 1986 that allowed relatively nominal fuel cost increases through the fuel clause when the capital investment was relatively small and would result in fuel savings that would off set the capital investment in only a few years.<sup>11</sup> In this case the capital investment is major. It will take years for the customers to realize any reduction in fuel costs from the CR#3 uprate. The CR#3 uprate capital investment is not relatively small, it will increase the PEF total rate base by 11%<sup>12</sup>. PEF is rewarded immediately. It will be 2016 before customers will receive any significant monetary benefit.<sup>13</sup> PEF plans to use an obsolete negotiated number from the past to govern the future. PEF looks to Order 05-0945 in Docket 050078-EI. For the purpose of calculating the rate increase it wants to lock in and pass through the fuel clause. PEF doesn't attempt to study current

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<sup>11</sup> DOCKET NO. 850001-EI-B; ORDER NO. 14546, Exhibit 15, Lawton TR (529 )

<sup>12</sup> Calculated by dividing \$440 million by the Dec 31, 2006 retail rate base found in Exhibit 16 Schedule 2 page 1

<sup>13</sup> Exhibit 15

conditions it uses a selective approach selecting some PEF favorable numbers from the 2005 order and improves on others.

1. PEF ignores the prohibition against including base rate type items in cost recovery clauses.
2. PEF rejects the remaining useful life standard for the recovery of its investment through a depreciation charge. It selects an arbitrary shorter term.
3. PEF says that it will have no authorized return on Equity (ROE) with respect to the 180 MW addition. Instead it plans to use an ROE and AFUDC rate that was negotiated in 2002 in return for its agreement to reduce its base rates by \$125 million and its agreement to revenue sharing which resulted in a \$41 million refund to customers in later years as base revenues grew<sup>14</sup>. It doesn't propose any rate reduction or revenue sharing for base rates in this case like the one given in return for doing away with an authorized return in the first place.

**Fuel cost recovery is inappropriate because the costs involved aren't fuel costs.** The problem with of granting cost recovery rather than base rate relief comes into focus when you look at the types of cost PEF is seeking to recover in the case. They are fixed cost, not variable volatile costs like fuel. They are not even operating expenses. The costs PE wants to recover are 1) depreciation expense, 2) a return on borrowed capital and 3) a return on its equity investment. These items have nothing to do with fuel cost, fuel transportation, or fuel handling.

In its order on utility fuel procurement practices, Order No. 12645, Docket 830002-EU, the Commission emphasized that the utility has the burden of proof:

*Any fuel or fuel related transaction which does not meet the above criteria shall be denied recovery through the fuel clause by the Commission, unless the utility, which has the full burden of proof, can demonstrate that the transaction is in the best interest of the ratepayer.*<sup>15</sup>

In Order No. 12645, the Commission discussed at length the fuel procurement policies

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<sup>14</sup> PSC Order No. 02-1197 Docket 050078-EI

<sup>15</sup> *Id.* at 14, emphasis added.

regulated utilities must follow. Order No. 12645 includes Appendix A, entitled "Florida Public Service Commission Fuel Procurement Policy."

The Policy IA states:

The Public Service Commission requires that all expense associated with the *procurement of fuel, fuel related handling services and fuel transportation* which are recovered through the fuel adjustment clause *be prudently incurred, result from competitive procurement procedures, be reasonably competitive in cost or value* relative to what other buyers are paying under similar terms and conditions for fuel or services for comparable quality or specifications and result from sound administration of fuel supply agreements.<sup>16</sup>

These are the kinds of expense that are entitled to fuel clause treatment, not steel, bricks and mortar.

**What happens in a typical base rate case?** When rates are set relative to fixed capital costs in a base rate case it involves determining the investment that is in use and useful operation and is in place for a test year. The test year can be no later than the forthcoming annual budget period. The rate base for the projected test year can be no greater than the average investment that will be in place for that year. The can be changed if they become unfair. As if the fuel charges aren't already burdensome to customers. In this case PEF requests a ruling that it can get automatic rate increases every year through the fuel for all expenses that it allocates to the 180MW of new capacity; if the expenses are prudent. Under the PEF plan the Commission will be bound to grant CR#3 uprate costs through the fuel clause for the next 36 years. The quasi legislative determination PEF is seeking from the Commission would be unconstitutional for the legislature to make. A bond issue binding the full faith and credit of the state's citizens cannot be issued without an election. An order binding the future credit of captive customers should not be rendered absent the consent of those to be charged.<sup>17</sup>

In a base rate case a depreciation charge is authorized to allow the utility to recover its investment over the useful life of the fixed assets. The rate base is reduced as the depreciation

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<sup>16</sup> Order No. 12645 at 12, emphasis added.

<sup>17</sup> Florida Constitution Article VI Section 11a.



charges are collected, but this has no impact on customer rates until there is a base rate case.

In a base rate case the Commission divides the rate base investment into the component parts of its capital structure and sets a return on each part. For deferred taxes collected from customers but not yet paid to the government it allows zero return. The Commission examines current market conditions and allows returns for short term debt, long term debt and equity based on the relative value of each in the capital structure using investments of comparable risk. PEF's last contested rate case was in Docket 910890-EI. In order 92-1197 the Commission found after study that the equity component of the Florida Progress rate structure was 37.79%. In this case PEF will use an equity component of 57.83%. The actual equity component may be much less when CR# 3 uprate comes on line if PGN allocates its cash to non Florida projects with a better potential return, but the equity component for the fuel clause recovery will not change under the current plan. Income taxes for rate making will not be reduced. They will be based on the phantom equity component.

Income tax charges amount to a lot of money, and result in a windfall if they don't have to be paid. The 11.75% return on equity PEF will use will flow through the fuel clause to be marked up by PEF with a revenue expansion factor. The purpose of the revenue expansion factor (NOI multiplier) is to gross up or expand the company's net operating income to compensate for income taxes and revenue taxes that the company will incur as the result of any revenue increase. For example the revenue expansion factor used in the last contested rate order, 92-1197, was 1.607157. PEF hasn't provided any information on this very major component of the proposed rate increase, but for illustrative purposes presume the capital investment for 2012 is \$440 million. We know that the locked in equity component will be 57.83% or \$254 million. The after tax allowed return for the investor will be 11.75%. PGN will be entitled to \$29.9 million. To obtain this after tax return the amount will be grossed up for taxes by multiplying this number by at least 1.6 for a cash return to PGN of \$47.8 million irrespective of the revenue taxes it must pay. PEF will also use a fictional interest cost for long term and short term debt based on past credit markets and negotiated settlements that are no longer

pertinent because there is no *quid quo pro* in the form of revenue sharing, refunds, base rate reductions or base rate increase postponements that were negotiated in 2005 and 2005.

Based on the facts presented at the hearing FIPUG concludes that PEF's representations that it is building CR#3 for economic reasons for the benefit of its customers needs to be taken with a grain of salt. PEF is more concerned about the need to serve its parent company's profit than it was in protecting its customers. A biblical proscription is apt:

***No man can serve two masters; for either he will hate the one, and love the other; or else he will hold to one, and despise the other. Ye cannot serve God and mammon.***<sup>18</sup>

### LEGAL PRINCIPLES APPLICABLE TO THE COMMISSION'S DECISION

**The Burden of Proof:** The burden of proving that the uprate is a justified fuel cost rests squarely with PEF. The rule that the burden of proof is on the utility in proceedings involving rates is so well recognized that this Commission has labeled it "universally established."<sup>19</sup>

The rule that, in proceedings involving rates requested by a utility company, the burden of proof is upon the applicant utility, has been universally established. Mississippi Public Service Commission v. Mississippi Power Company, 337 So.2d 936 (Miss. S. Ct., 1976); Pennsylvania v. Laurel Pipeline Company, 19 PUR 4th 454 (Penn. Commonwealth Court, 1977); Re: Hawaiian Electric Company, Inc., 10 PUR 4th 1, 535 P2d 1102 (Hawaii S. Ct., 1975); North Carolina ex rel. Utilities Commission et al. v. Duke Power Company, 206 SE 2d 269, 6 PUR 4th 390 (N.C. St. Ct., 1974). In such proceedings, the burden is upon the utility to demonstrate the reasonableness of the operating expenses for which it should be compensated to enable it to realize a fair rate of return. ... As in ratemaking proceedings generally, the burden of proof lies with the petitioning utilities to demonstrate the reasonableness and propriety of the expenses incurred.<sup>20</sup>

As in any case where a utility imposes charges upon its customers, PEF has the burden to prove that the costs it seeks are fair, just and reasonable. It has further held that:

The burden of proof rests *solely* with the utility to document the reasonableness of its procurement practices and the resultant expenses from such practices.<sup>21</sup>

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<sup>18</sup> Mathew 6:24; Luke 16:13, The recently discovered Gospel of the Apostle Thomas on the sayings of Jesus 47:2

<sup>19</sup> *In re: Investigation into forced shutdown of Florida Power Corporation's Crystal River No. 3 unit*, Order No. 8994 at 2, Docket No. 780732-EU, August 3, 1979.

<sup>20</sup> *Id.*

<sup>21</sup> *Id.* at 12, emphasis added. See also, *In re: Investigation of forced shutdown of Crystal River No. 3*, Order 9775 at 4, Docket No. 780732-EU, January 30, 1981 ("the burden is upon the company to demonstrate that the fuel expenses which it proposes to recover from ratepayers were reasonably and prudently incurred."); *In re: Investigation into extended outage at Florida Power and Light Company's St. Lucie Unit No. 1*, Order No. 15486 at 21, Docket No. 840001-EI-A, December 23,

PEF has done nothing to satisfy the requirement to show that the returns and depreciation rates it is seeking are fair and reasonable.

## ISSUE 2

### **If the Commission authorizes clause recovery of the CR3 Uprate Project, which cost recovery clause, fuel or capacity, is appropriate for capitalized costs attributable to the uprate?**

**FIPUG reiterates its position that cost recovery is wrong**, but if this method is chosen the capacity clause is more reasonable, because it considers both demand and energy consumption in the calculation of the surcharge.

An examination of Exhibit 21, The 2007 ten year site plan Schedule 3.1.1 discloses that there is a big difference between the total summer peak demand on the system and the net firm demand that is used to calculate PEF's reserve margin. For 2007 1332 MW of industrial, commercial and residential demand is not considered firm demand. In other words these customers receive a lower quality of service. Their service can be interrupted or managed to provide firm service to others including other utilities. They pay a slightly lower rate to compensate for releasing PEF from its obligation to provide firm service. According to Mr Waters testimony<sup>22</sup> 345,000 residential customers are subject to load management along with interruptible and commercial non firm customers. Their right to receive power from the nuclear plant is inferior to firm customers, but they will receive no credit for their agreement to receive lower quality service if fuel clause recovery is chosen.

Another factor that militates against the fuel clause is that PEF has time of day pricing, but it is not real time pricing during the off peak periods C#3 power is average in with higher fuel costs. There is no pure play. The benefits are not commensurate with the proposed kwh charges.

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1985 (“[U]tilities bear the burden of demonstrating that their fuel costs are reasonable and prudent.”).

<sup>22</sup> Waters Sept 22, 2006 prefiled testimony page 7 line 8

### **ISSUE 3**

**If the Commission authorizes clause recovery of the CR3 Uprate Project, what capital recovery periods should the Commission prescribe for the assets?**

**FIPUG reiterates its position that cost recovery is wrong.** A fast write off improves PGN's profits, but it creates intergenerational inequity. It is not warranted by generally accepted accounting principles. The Commission has opposed intergenerational inequity in the past and does today. Utilities accelerate the depreciation of their assets to postpone income to the future. For regulatory purposes current customers are required to pay the taxes that would be assessed using straight line depreciation. This is done so that future customers will not be disadvantaged. In this case PEF proposes charging current customers more and showering the alleged savings on to future customers. Its sole purpose in discriminating against current customers is to improve PGN cash flow with no corresponding benefit to today's customers who will bear the greatest burden of the increase.

### **ISSUE 4**

**If based on the recovery periods prescribed for the CR3 Uprate Project assets, what ratemaking adjustments, if any, are necessary?**

**FIPUG reiterates its position that cost recovery is wrong.** FIPUG agrees with OPC that if the PEF fast write off method is used and if there is ever another base rate case customers will receive short shrift from the effect of deferred tax treatment proposed by PEF.

### **ISSUE 5:**

**If the Commission authorizes PEF clause recovery of the CR3 Uprate Project, what return on investment should the Commission authorize PEF to include?**

FIPUG reiterates its position that cost recovery is wrong. Evidence in the record discloses that under its proposal PEF will receive a 13.19% after tax return on equity<sup>23</sup>. This is a before income tax return of over 22%. These are income taxes that the utility conglomerate may not have to pay. Because the recovery is guaranteed and all risk is eliminated and because the return is recalculated every year the return should be no greater than the return on US Treasury notes. The risk guaranteed by 1.6 million customers is substantially the same as “risk free” treasury investments.

### **ISSUE 6**

**If the Commission authorizes clause recovery of the CR3 Uprate Project, how should the costs associated with the project be allocated between wholesale and retail jurisdictions for rate recovery purposes?**

FIPUG reiterates its position that cost recovery is wrong. It doesn't make sense that retail customers should pick up the full tab for a plant partially owned by other utilities which are entitled to the usufructs of the generator. In accordance with the projected wholesale sales shown in the filed ten year site plans<sup>24</sup>, approximately 12% to 15% are made to the wholesale market. In addition if there are any co owners of the CR # 3 these owners should make the appropriate contribution.

### **ISSUE 7**

**If the Commission authorizes clause recovery of the CR3 Uprate Project, what reports, if any, should PEF be required to file with the Commission?**

In the cost recovery dockets the Commission must analyze over \$11 billion in cost recovery

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<sup>23</sup> Exhibit 29 AFUDC spreadsheet.

<sup>24</sup> Exhibit 21

In the cost recovery dockets the Commission must analyze over \$11 billion in cost recovery items every year with only about 90 days study. No serious consideration can be given to the prudence of confidential capital expenditures by one utility without even the opportunity for reasonable discovery before intervenor testimony must be filed. The capital expenditures should be filed with the Commission staff at least nine months before recovery is sought.

ISSUE 8:

Should this docket be closed?

Yes.

CONCLUSION

Base revenues grow as sales grow. New power plants are built to meet that growth, and can be funded to a great degree from the new sales they are built to satisfy. The idea that the 180 MW addition to CR#3 exclusively for economic reasons is far fetched. The addition like the plan that abandoned Hines 5 & 6 in favor of purchased power is only a device by a public utility holding company to reduce its risk and increase its profit.

To increase rates through the fuel clause or any other guaranteed cost recovery device for the construction of a major power plant on the premise that it will save fuel cost would be tantamount to an abandonment of the regulatory responsibility to set rates that are fair to consumers as well as utilities. It will open the door to the proposition that every new power plant and every capital addition that promises to save fuel will automatically result in a rate increase irrespective of whether current base rates are sufficient to pay most of the cost.

The scheme to recover the CR#3 uprate costs through a cost recovery clause should be summarily denied.

XXXXXXXXXXXXXXXXXXXX

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that a true and correct copy of the foregoing pleading has been furnished by federal express to the Commission Clerk and by electronic mail and U.S. Mail the 27<sup>th</sup> day of August, to the following:

<p>Lisa Bennett &amp; Lorena Holley <b>Florida Public Service Commission</b></p> <p>Division of Legal Services 2540 Shumard Oak Boulevard Tallahassee, Florida 32399-0850</p>	<p>Mike B. Twomey Attorney for AARP P. O. Box 5256 Tallahassee, FL 32314-5256</p>
<p>James M. Walls/Dianne M. Triplett <b>Carlton Fields Law Firm</b> Attorneys for Progress Energy</p> <p>P.O. Box 3239 Tampa, FL 33607-5736</p>	<p><b>Department of Community Affairs</b> Valerie Hubbard, Director Division of Community Planning 2555 Shumard Oak Blvd. Tallahassee, FL 32399-2100</p>
<p><b>Office of Public Counsel</b> Chas Beck,/P. Christensen/J. McGlothlin c/o The Florida Legislature 111 W. Madison St., Room 812 Tallahassee, FL 32399-1400</p>	<p><b>Department of Environmental Protection</b> Buck Oven/Michael P. Halpin Siting Coordination Office 2600 Blairstone Road MS 48 Tallahassee, FL 32301</p>
<p><b>Progress Energy Florida, Inc.</b> Mr. Paul Lewis, Jr. 106 East College Avenue, Suite 800 Tallahassee, FL 32301-7740</p>	<p><i>/s/ John W. McWhirter, Jr.</i></p> <hr/> <p>Florida Bar # 53905 McWhirter, Reeves and Davidson, PA Attorneys for <b>Florida Industrial Power Users Group</b> 400 North Tampa Street, Suite 2450 Tampa, FL 33602 813.224.0866 Fax 813.221.1854 jmcwhirter@mac-law.com</p>
<p><b>Progress Energy Service Company, LLC</b></p> <p>John T. Burnett/R. Alexander Glenn P.O. Box 14042 Saint Petersburg, FL 33733-4042</p>	
<p>R. Scheffel Wright/John T. LaVia Attorneys for Florida Retail Federation 225 South Adams Street, Suite 200 Tallahassee, FL 32301</p>	

ATTACHMENT 1

BEFORE THE PUBLIC SERVICE COMMISSION

The following Commissioners participated in the disposition of this matter:

BRAULIO L. BAEZ, Chairman  
J. TERRY DEASON  
RUDOLPH "RUDY" BRADLEY  
LISA POLAK EDGAR

### ORDER APPROVING STIPULATION AND SETTLEMENT

BY THE COMMISSION:

#### BACKGROUND

On April 29, 2005, Progress Energy Florida, Inc. (PEF) filed a petition for approval of a permanent increase in rates and charges sufficient to generate additional total annual revenues of \$205,556,000 beginning January 1, 2006. In support of its petition, PEF filed new rate schedules, testimony, Minimum Filing Requirements (MFRs), a Nuclear Decommissioning Study, Fossil Dismantlement Study, and Depreciation Study. By Order No. PSC-05-0694-PCO-EI, issued June 24, 2005, we suspended PEF's proposed new rate schedules to allow our staff and intervenors sufficient time to adequately and thoroughly examine the basis for the proposed new rates.

As part of this proceeding, we conducted service hearings at the following locations in PEF's service territory: Ocala, St. Petersburg, Clearwater, and Tallahassee. A formal administrative hearing was scheduled for September 7 – 16, 2005. The Office of Public Counsel (OPC), AARP, the Florida Industrial Power Users Group (FIPUG), White Springs Agricultural Chemicals, Inc. (WS), the Florida Retail Federation (FRF), Commercial Group (CG), Buddy L. Hansen and the Sugarmill Woods Civic Association, Inc. (SMW), and the Florida Attorney General (AG) were granted intervenor status.

On September 1, the parties filed a joint motion for approval of a Stipulation and Settlement Agreement (Stipulation)<sup>25</sup>, between all parties to resolve all matters in this proceeding. Our staff reviewed the Stipulation and Settlement thoroughly, and provided its analysis to us at the start of our technical hearing on September 7, after which time this Commission rendered its vote on the matter.

By this Order, we approve the Stipulation. Jurisdiction over these matters is vested in this Commission by various provisions of Chapter 366, Florida Statutes, including Sections 366.04, 366.05, and 366.06, Florida Statutes.

#### STIPULATION AND SETTLEMENT

The major elements contained in the Stipulation are as follows:

- The Stipulation is effective for a term of four years – the first billing cycle in January 2006 (implementation date) through the last billing cycle in December 2009; however, PEF may extend the term of the Stipulation through the last billing cycle of June 2010, upon written notice to the parties to the Stipulation and to the Commission, on or before March 1, 2009. (Paragraph 1)

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<sup>25</sup> The Stipulation and Settlement is attached hereto as Attachment A and is incorporated herein by reference.



- Except as otherwise provided in the Stipulation, PEF will continue its existing base rates in effect for the term of the Stipulation. (Paragraph 2)
- The billing demand credits for interruptible and curtailable customers currently receiving service under PEF's IS-1, IST-1, CS-1 and CST-1 rate schedules, as modified herein, will remain in effect for the term of the Stipulation; however, these rate schedules will continue to be closed to new customers, as defined in the stipulation approved by the Commission in Docket No. 950645-EI. (Paragraph 3)
- No party will petition for a change in PEF's base rates and charges to take effect prior to the minimum term of the Stipulation and Settlement, and, except as provided for in the Stipulation and Settlement, PEF will not petition for any new surcharges to recover costs that traditionally would be, or are presently, recovered through base rates. (Paragraph 4)
- A revenue sharing plan similar to the one contained in PEF's currently operative rate settlement will be implemented through the term of the Stipulation. Retail base rate revenues between specified sharing threshold amounts and revenue caps will be shared as follows: PEF's shareholders will receive a 1/3 share, and PEF's retail customers will receive a 2/3 share. Retail base rate revenues above the specified revenue caps will be refunded to retail customers on an annual basis. (Paragraphs 5 and 6)
- If PEF's retail base rate earnings fall below a 10% ROE as reported on a Commission-adjusted or pro-forma basis on a PEF monthly earnings surveillance report during the term of the Stipulation, PEF may petition to amend its base rates, and parties to the Stipulation are not precluded from participating in such a proceeding. This provision does not limit PEF from any recovery of costs otherwise contemplated by the Stipulation. (Paragraph 7)
- PEF will be permitted clause recovery of incremental costs associated with establishment of a Regional Transmission Organization or costs arising from an order of this Commission or the Federal Energy Regulatory Commission addressing any alternative configuration or structure to address independent transmission system governance or operation. The parties to the Stipulation may participate in any proceeding relating to the recovery of costs contemplated in this provision for the purpose of challenging the reasonableness and prudence of such costs. (Paragraph 9)
- PEF will continue collecting its storm reserve deficiency as provided in Order No. PSC-05-0748-FOF-EI; however, PEF reserves the right to petition the Commission for approval to either: (a) securitize (1) any or all of its storm reserve deficiency as set forth in Order PSC-05-0748-FOF-EI, or (2) an amount necessary to replenish PEF's reserves for non-catastrophic storms, or both; or (b) increase its base rates or to impose a separate charge to collect and accrue reserves for non-catastrophic storms without the application of any form of earnings test or measure and irrespective of previous or current base rate earnings. Those Parties who have filed notices of appeal of Order No. PSC-05-0748-FOF-EI will withdraw their appeals. In the event PEF collects any remaining storm deficiency or collects and accrues for future non-catastrophic storm events pursuant to Section 366.8260, Florida Statutes, the parties agree to negotiate in good faith for an optional tariff rider whereby a class of demand-metered customers may pay its pro rata share of any remaining uncollected 2004 storm cost deficiency as established in Commission Order PSC-05-0748-FOF-EI through a charge over a period of no more than two years. (Paragraph 10)

- PEF will continue to suspend accruals to its reserve for nuclear decommissioning and fossil dismantlement, and shall apply the depreciation rates consistent with those in PEF's Depreciation Study, as modified by Exhibit 2, attached to the Stipulation. (Paragraph 11)
- Beginning on the commercial in-service date of Hines Unit 4, PEF will further increase its base rates to recover the full revenue requirements of the installed cost of Hines Unit 4 and the unit's non-fuel operating expenses. PEF will recover annually through the Fuel and Purchased Power Cost Recovery Clause (Fuel Clause) the 2006 full revenue requirements of the installed cost of Hines Unit 2, excluding the unit's non-fuel Operations and Maintenance (O&M) expenses. Upon the commercial in-service date of Hines Unit 4, PEF will transfer the recovery of Hines Unit 2's 2006 full revenue requirements, excluding the unit's non-fuel O&M expenses, from the fuel cost recovery clause to base rates by decreasing PEF's fuel charges and increasing its base rates accordingly. (Paragraph 12)
- PEF will be authorized to accelerate the amortization of the regulatory assets for FAS 109 Deferred Tax Benefits Previously Flowed Through, Unamortized Loss on Reacquired Debt, and Interest on Income Tax Deficiency over the term of the Stipulation. PEF's adjusted equity ratio will be capped at 57.83%. (Paragraph 13)
- PEF will continue to operate without an authorized return on equity (ROE) range for the purpose of addressing earnings levels, and the Stipulation's sharing mechanism will be the mechanism to address earnings levels. However, for purposes other than reporting or assessing earnings (such as cost recovery clauses or AFUDC), PEF will use 11.75% as its ROE, and the annual AFUDC rate will be 8.848%. (Paragraph 14)
- PEF will continue to collect its post-September 11, 2001, incremental security costs through the Capacity Cost Recovery Clause, and PEF's carrying costs of fuel inventory in transit and fuel procurement O&M costs will be collected through the fuel recovery clause. (Paragraph 16)
- New capital costs for expenditures recovered through the Environmental Cost Recovery Clause will be allocated, for the purpose of clause recovery, consistent with PEF's current cost of service methodology. (Paragraph 18)
- PEF will continue to focus on its customer service and reliability consistent with Commission standards and good utility practice. (Paragraph 19)

Most of the terms of the Stipulation and Settlement appear to be self-explanatory. Still, we believe that several provisions merit comment or clarification so that as full an understanding of the parties' intent can be reflected in this Order before the Stipulation is implemented. Based on the parties' discussions with our staff and discussions during our September 7 vote to approve the Stipulation, we understand that the parties agree with the clarifications discussed below.

#### Paragraphs 2 and 15

Under Paragraphs 2 and 15, Exhibit 1 to the Stipulation sets forth a number of changes to PEF's cost of service and rate design matters. Notably, the Stipulation provides for increases to the lighting services schedule, both for the fixture and maintenance charges for most of the fixture types as

well as an increase in the charge for many of the poles. The other notable charge is the addition of a late payment charge, which provides that late payments shall be assessed either \$5 or 1.5%, whichever is greater. In all, the changes listed on Exhibit 1 will generate an additional \$15 million in revenue per year, which will be subject to the revenue sharing, but which will not adjust the sharing threshold as addressed in Paragraph 6 of the Stipulation.

#### Paragraphs 5 and 6

Paragraph 5 describes and defines the revenue sharing plan agreed to by the parties. Subpart (c) of this paragraph states that the revenue sharing plan and the corresponding revenue sharing thresholds and revenue caps are intended to relate only to retail base rate revenues based on PEF's current structure and regulatory framework. Further, subpart (c) indicates that incremental revenues attributable to a business combination or acquisition involving PEF, its parent, or its affiliates will be excluded in determining retail base rate revenues for purposes of the revenue sharing plan. The parties clarified that in the event that a portion of PEF's system is sold or municipalized, appropriate adjustments would be made to account for the associated revenue reduction before application of PEF's annual average growth rate upon which the revenue sharing thresholds and revenue cap are calculated. Also, in the event new customers or part of a system is added to PEF, those revenues and customers would be excluded from revenue sharing. We note that the rolling ten-year average growth rate in retail kWh sales rate embodied in this provision is based on PEF-specific information as opposed to statewide information, and that the growth rate has been adjusted to account for the sale of PEF's Winter Park system.

#### Paragraph 10

Paragraph 10 of the Stipulation addresses storm cost recovery, in the context of the recovery mechanism approved by Order No. PSC-05-0748-FOF-EI, issued July 14, in Docket No. 041272-EI, and with regard to securitization of storm costs pursuant to Section 366.8260, Florida Statutes. The Stipulation makes a distinction between "catastrophic" and "non-catastrophic" storms; however, we note that neither the Order nor the statute draws this distinction. The parties clarified that the intent of this section was to preserve PEF's option of seeking securitization or to seek a surcharge recovery, in the event of any storm that would cause depletion of PEF's storm reserve. PEF acknowledges that recovery for storm costs under either mechanism must necessarily be subject to the provisions of the applicable rules and statutes; nor does the Stipulation seek to change PEF's current practice or change the Commission's current policy concerning what constitutes an appropriate charge to PEF's storm reserve.

If PEF elects to seek recovery of storm-related costs pursuant to Section 366.08260, Florida Statutes, the total cost subject to recovery would be allocated to customer classes pursuant to that Statute. Subsection 10(c) of the Stipulation, however, provides that PEF may request approval of a tariff to allow a class of demand-metered customers to pay their pro rata share of costs prior to securitization over a period not to exceed two years. This contemplates that demand-metered customers would "opt-out" of the securitization costs, while the balance of funds would be sought through a securitized bond issuance and the total costs, including the cost of securitization, would be allocated to all other classes of customers. The language of the Stipulation appears to limit this shortened recovery period to only those costs that were identified in Order No. PSC-05-0748-FOF-EI. However, based on our staff's discussions with the parties, it has been clarified that the alternative recovery schedule would apply to the total storm related dollars allocated to that class, which would otherwise be sought in a securitization request. The parties further clarified that the intent of this Subsection is that it apply to the entire class of demand-metered customers. PEF noted however that

in the event it moves forward with a petition for securitization or for an additional storm-related surcharge, it would be willing to work with individual customers and look for reasonable alternatives. We note that this Commission retains its authority to review any tariff which may be filed in conjunction with Subsection 10(c), to ensure it comports with all rule, statutory, and public interest requirements.

#### Paragraph 12

Paragraph 12 addresses base rate and clause recovery for costs associated with PEF's Hines 2 and Hines 4 units. With respect to Hines Unit 4, the parties clarified that the calculation of the costs that would be included in base rates would be based on the first 12 months of revenue requirements and would include half a year of depreciation. Further, with regard to the calculation of these costs, an overall (rather than incremental) cost of capital will be used, which would include components such as deferred taxes. We also note that this Commission retains its ability to review the installed costs of Hines Unit 4 for reasonableness and prudence in a future filing.

#### Paragraphs 16 and 17

Paragraph 16 provides that PEF will continue to collect its post-September 11, 2001, incremental security costs through the Capacity Cost Recovery Clause, and PEF's carrying costs of fuel inventory in transit and fuel procurement O&M costs will be collected through the fuel recovery clause. Paragraph 17 provides that Commission approval of the Stipulation constitutes approval of PEF's MFRs (for regulatory reporting purposes and for establishing baseline costs in PEF's next base rate proceeding, not for the purposes of passing upon the accuracy of the MFRs). The parties clarified that \$3.28 million of incremental security costs that is reflected in the MFRs for recovery through base rates will actually be recovered through the Capacity Cost Recovery Clause on a going-forward basis. The parties further clarified that the fuel procurement O&M costs to be recovered through the Fuel Clause as referenced in Paragraph 16 are only those fuel procurement O&M costs associated with coal procurement, and not other types of fuel.

#### Paragraph 19

PEF's last rate case, Docket No. 000824-EI, was resolved by the approval of a joint stipulation in Order No. PSC-02-0655-AS-EI, issued May 14, 2002. That stipulation provided that in the event PEF did not achieve a 20 percent improvement in System Average Interruption Duration Index (SAIDI) during 2004 and 2005, the utility would refund \$3 million for both years in equal amounts to the ten percent of PEF's customers served by PEF's worst performing distribution feeder lines. At the September 7 hearing, we clarified that the parties were not contesting PEF's performance for 2004. However, consistent with Order No. PSC-02-0655-AS-EI, the performance requirement still exists for 2005, and will continue in effect through 2005 with the same refund provisions should PEF fail to achieve the SAIDI performance target for 2005.

### FINDINGS

Upon review and consideration, we find that the Stipulation provides a reasonable resolution of the issues in this proceeding with respect to PEF's rates and charges and its depreciation rates and capital recovery schedules. The Stipulation and Settlement appears to provide PEF's customers with a degree of stability and predictability with respect to their electricity rates while allowing PEF to maintain the financial strength to make investments necessary to provide customers with safe and reliable power. In addition, we recognize that the Stipulation reflects the agreement of a broad range

of interests: PEF, OPC, the Attorney General, and residential, commercial, and industrial customers of PEF.

In conclusion, we find that the Stipulation establishes rates that are fair, just, and reasonable, and that approval of the Stipulation is in the public interest. Therefore, we approve the Stipulation. As with any settlement we approve, nothing in our approval of this Stipulation diminishes this Commission's ongoing authority and obligation to ensure fair, just, and reasonable rates. Nonetheless, this Commission has a long history of encouraging settlements, giving great weight and deference to settlements, and enforcing them in the spirit in which they were reached by the parties.

Based on the foregoing, it is

ORDERED by the Florida Public Service Commission that the Stipulation and Settlement Agreement and exhibits, filed September 1, 2005, which is attached hereto as Attachment A and incorporated herein by reference, is approved. It is further

ORDERED that PEF shall file, for administrative approval, revised tariff sheets to reflect the terms of the Stipulation. It is further

ORDERED that Docket No. 050078-EI shall be closed.

By ORDER of the Florida Public Service Commission this 28th day of September, 2005.

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BLANCA S. BAYÓ, Director  
Division of the Commission Clerk  
and Administrative Services

( S E A L )