

Ann Cole

090079-EI

**From:** Chuck Hill  
**Sent:** Monday, May 18, 2009 12:31 PM  
**To:** Katherine Fleming; Mary Bane  
**Cc:** Betty Ashby; Selena Chambers; Booter Imhof; Mary Anne Helton; Jennifer Brubaker; Ann Cole; Tim Devlin; Marshall Willis; Cheryl Bulecza-Banks; Erik Saylor; Caroline Klancke; Keino Young; William C. Garner; Lorena Holley; Roberta Bass; Bill McNulty; Larry Harris; Lois Graham; Kay Posey; Kelly McLanahan; Cristina Slaton; Steve Larson  
**Subject:** RE: Request for Oral Modification - Item 9, May 19, 2009 Agenda Conference

Approved.

**From:** Katherine Fleming  
**Sent:** Monday, May 18, 2009 11:16 AM  
**To:** Mary Bane; Chuck Hill  
**Cc:** Betty Ashby; Selena Chambers; Booter Imhof; Mary Anne Helton; Jennifer Brubaker; Ann Cole; Tim Devlin; Marshall Willis; Cheryl Bulecza-Banks; Erik Saylor; Caroline Klancke; Keino Young; William C. Garner; Lorena Holley; Roberta Bass; Bill McNulty; Larry Harris; Lois Graham; Kay Posey; Kelly McLanahan; Cristina Slaton; Steve Larson  
**Subject:** Request for Oral Modification - Item 9, May 19, 2009 Agenda Conference

Staff requests permission to make an oral modification to its recommendation for Docket No. 090079-EI, which the Commission will address as Item 9 at the May 19, 2009, Agenda Conference. Due to a scrivener's error, staff referenced the incorrect issue number in the recommendation statement in Issue 3. Staff would like to modify the recommendation statement and staff analysis in Issue 3, as shown below in legislative format:

**Issue 3:** Has PEF established a prima facie entitlement for interim relief pursuant to Section 366.071(1), F.S.?

**Recommendation:** Yes. Staff believes that the 10 percent threshold adopted by the parties in the Stipulation represents a level below which rates are no longer fair, just, and reasonable, thereby entitling PEF to petition the Commission to amend its base rates. PEF has presented prefiled testimony and documentation supporting that it is earning outside the 10 percent threshold. Accordingly, staff recommends that PEF has established a prima facie entitlement for interim relief and is entitled to the proposed interim increase pursuant to Section 366.071, F.S., as discussed in Issue 4 8. (Fleming, Saylor)

The change should also be reflected in the last sentence of the last paragraph contained on page 9 in the Staff Analysis, as follows:

... Company agree that Section 7 of the Stipulation provides that the Company may seek to amend its base rates in the event that PEF's retail base rate earnings fall below the 10 percent threshold, notwithstanding Section 4. Therefore, staff believes that the 10 percent threshold adopted by the parties in the Settlement represents a level below which rates are no longer fair, just, and reasonable thereby entitling PEF to petition the Commission to amend its base rates. PEF has presented prefiled testimony and documentation supporting that it is earning outside the 10 percent threshold. Accordingly, staff recommends that PEF has shown a prima facie entitlement for interim relief and is entitled to the proposed interim increase, as discussed in Issue 4 8.

Please let me know if you have any questions or concerns regarding this request.

Thank you.

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