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Docket: 070703-EI

In re: Review of coal costs for Progress Energy Florida's Crystal River Units 4 and 5 for 2006 and 2007

On behalf of Progress Energy Florida

Consisting of 19 pages

The attached document for filing is PEF's Post-Hearing Statement and Brief.

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In Re: Review of coal costs for Progress Energy Florida's Crystal River Units 4 and 5 for 2006 and 2007	))))	Docket No. 070703-EI Filed: May 26, 2009

PROGRESS ENERGY FLORIDA, INC.'S POST-HEARING STATEMENT AND BRIEF

Progress Energy Florida, Inc. ("PEF" or the "Company"), hereby submits its Post-Hearing Statement of Issues, Positions, and Brief in this matter and states as follows:

I. PEF's Coal Purchases for Crystal River Units 4 and 5 for 2006 and 2007 Were Reasonable and Prudent.

A. History and Purpose of this Docket

In Docket 060658, the Office of the Public Counsel ("OPC") alleged that while Wyoming Powder River Basin ("PRB") coal had been uneconomic and a bad choice for PEF's customers from the mid-1980s when Crystal River Units 4 and 5 ("CR 4&5") first went into service until 1995, that coal allegedly became economic in 1995, and that PEF should have burned a 50/50 blend of it at CR 4&5 from 1995 to 2005. OPC alleged about $135 million in damages in that case.

This Commission rejected OPC's allegations in Docket 060658 and found that in 2003, 2004, and 2005 only, PEF should have burned an 80/20 blend of high quality bituminous ("CAPP") coal and lower quality Wyoming PRB coal. The Commission ordered PEF to refund customers about $13 million instead of the $135 million that OPC alleged, but could not substantiate.

In its order in Docket 060658, this Commission also gave a very clear and concise set of instructions to PEF. Specifically, because all the evidence regarding PRB coal ended in 2005 in that case, the Commission opened this docket and instructed PEF to present evidence on the economics of an 80/20 blend of PRB coal for 2006 and 2007. In fact, when OPC filed its Tentative List of Issues on September 24, 2007 in Docket 070001-EI, it clearly understood that the issue for determination resulting from the Commission's order in Docket 060658 was whether a blend of PRB coal was economical for PEF's customers. OPC's Tentative List of Issues concerning this matter states:

> **ISSUE 12A**: Were the costs of the fuel that Progress Energy Florida incurred to operate Crystal River Units 4 and 5 during calendar year 2006 unreasonably high as ***a consequence of its failure to position itself to burn a blend of Powder River Basin subbituminous coal and bituminous coal in the units when the blend was more economical for customers?*** If so, by what amount should the true-up for 2006 be adjusted to account for the unreasonable fuel costs?[1]

So, as OPC's proposed issue 12A makes clear, OPC understood that this Commission's instructions for what was to be at issue for 2006 and 2007 in this docket was limited to the coal that the Commission actually heard evidence on and considered in Docket 060658. Had the Commission wanted to open an analysis on the economics of every conceivable type of coal blend possible in the entire world, it could have (and would have) said so in Order No. 07-0816-FOF-EI. Instead, the Commission, as was proper as a matter of law, limited its two-year extension of its review in Docket 060658 to a 20% blend of Wyoming PRB coal and CAPP coal, the coal it heard evidence on in Docket 060658.

Following the Commission's instructions to the letter, PEF is the one and only party in this matter that filed testimony and presented any evidence to address the economics of the PRB coal blends that the Commission considered in Docket 060658. As discussed below, PEF's testimony and evidence unequivocally show that 80/20 blends of PRB and CAPP coal were

[1] Sept. 24, 2007, Docket 070001, Document No. 08734-07, OPC's Tentative List of Issues, page 2 (emphasis added).

uneconomic and a bad choice for PEF's customers in 2006 and 2007 when compared to other purchase options that PEF had at <u>any time</u> between 2004 and 2007, for coal that would be delivered and used in 2006 and 2007.

B. PRB Coal Blends Were Not a Good Choice for PEF's Customers in 2006 and 2007

PEF witnesses Heller and Weintraub are the only witnesses in this proceeding who provided direct evidence of actual costs for coal used at CR 4&5 in 2006 and 2007 compared to the costs that would have been incurred if a 20% blend of PRB coal had been used during the same time period. Mr. Heller's comparison follows the "Cost Effectiveness Test" performed by Staff in their Primary Recommendation in Docket 060658 as used in Order 07-0816-FOF-EI and Attachment A.[2] Mr. Weintraub presented evidence on any other possible PRB blend purchase options that would have been viable for use in 2006 and 2007, both hypothetical and actual. As all of PEF's evidence shows, PRB coal blends would have cost, not saved, PEF's customers money in 2006 and 2007 when compared to other actual or hypothetical options. This testimony went unchallenged by any party.

(i) Application of the FPSC Cost Effectiveness Test from Docket 060658

In his direct testimony, Mr. Heller provided a cost effectiveness analysis of potential PRB coal blends using the cost effectiveness test that the Commission adopted in Docket 060658. To support his conclusions, Mr. Heller provided a detailed analysis in both his pre-filed direct testimony and in his testimony at the hearing. Mr. Heller meticulously explained how he arrived at every figure presented in his testimony, and in every instance possible, Mr. Heller relied on

[2] July 19, 2007 Staff Recommendation in Docket 060658 pages 90-92 and PSC Order No. PSC-07-0816-FOF-EI, October 10, 2007 pages 37-39.

actual data from objective sources that cannot be reasonably disputed. In fact, OPC admits that it agrees with almost all of Mr. Heller's data inputs and calculations. (Tr. P. 386, L. 14-24; Tr. P. 505, L. 14-20; Direct Testimony of David Putman, P. 9, L. 12-19; P. 23, L. 12-15).

As Exhibit JNH-3 to Mr. Heller's direct testimony illustrates, and as Mr. Heller confirmed at the hearing, PEF was able to economically procure bituminous coal in 2006 for a delivered price of $3.30/MMBtu (Tr. P. 195, L. 19-24). The evaluated cost of PRB coal for 2006 was $3.63/MMBtu, which made it $.33/MMBtu more expensive than bituminous coal. (Direct testimony of James N. Heller, Exhibit_JNH-3). In 2007, PEF's delivered price for bituminous coal was $3.47/MMBtu. (Direct testimony of James N. Heller, Exhibit JNH-3). When compared to the evaluated cost of PRB coal at $3.51MMBtu, PEF's 2007 bituminous purchases won again. (Direct testimony of James N. Heller, Exhibit JNH-3). Therefore, Mr. Heller's economic analysis shows that substituting a 20% blend of PRB coal for the coal actually used at CR 4&5 during 2006 and 2007 was not cost-effective. (Direct testimony of James N. Heller, Exhibit JNH-3). From a two-year, all-in cost perspective, a 20% blend of PRB coal in 2006 and 2007 would have been approximately $3.1 million higher than the cost of burning CAPP and import coal in 2006 and 2007 at CR 4&5. (Direct testimony of James N. Heller, P. 16, L. 10-13).

During the hearing in this case, Mr. Heller also confirmed that even if one were to increase the volumes of coal he used to determine PRB prices, or if one were to make other adjustments to his pricing assumptions (such as considering the cost of delivering coal from the docks, where PRB could feasibly have been blended, to Crystal River), the outcome of his analysis would have remained the same and PEF's coal choices for 2006 and 2007 would have still remained the most cost-effective options. (Tr. P. 199, L. 22-25; Tr. P. 248, L. 2-11; Tr. P. 263, L. 10-17). The bottom line is that any reasonable application of the Commission's cost effectiveness test from Docket 060658 shows that PEF purchased coal at a lower cost than what PRB coal would have cost for use in 2006 and 2007, and no one presented any evidence to the contrary. (Tr. P. 249, L. 8-13; Tr. P. 604-605, L. 13-16).

(ii) Analysis of Other PRB Blends for 2006 and 2007

In addition to the inputs that Mr. Heller used in his analysis, both Commission Staff and the Commission itself inquired as to the cost effectiveness of other PRB coal price inputs, such as spot market prices in 2006 and 2007. (Tr. P. 570, L. 6-23). In every comparison scenario, the coals procured by PEF in 2006 and 2007 were more cost effective than PRB coal blends. (Tr. P. 570, L. 8-16). These comparisons further support both the testimony of Mr. Heller and Mr. Weintraub, and are backed up by record evidence.

For example, looking at the comparison chart provided in PEF's response to Staff's First Set of Interrogatories, Question No. 29A, PEF purchased 10,000 tons of coal from Massey in August 2007 on the spot market for $25.00 per ton (see Coal Purchase Confirmation in PEF's Response to OPC's First Request for Production of Documents, Question No. 1, Bates Nos. PEF-CC-000028/29). This was a 9,881 Btu coal with 1.07 lbs. SO_2/MMBtu content as reported in FERC data and produced in discovery (PEF's Answers to Staff's First Set of Interrogatories, Attachment B). The Massey coal was delivered by water via river barges to the IMT terminal. (Tr. P. 571, L. 22-23). The cost to deliver this coal to IMT ($35.81/ton) is provided in PEF's Answers to Staff's 2nd Set of Interrogatories, Question No. 13 in Docket 080001. There is an additional cost to deliver the coal to Crystal River as shown in the column titled cents per million delivered to Crystal River. (Tr. P. 571-572, L. 24-2).

The Massey coal was placed in inventory and later blended with base coals of higher BTU value in PEF's inventory at the terminal. This yielded a blended coal that met acceptable BTU values for Crystal River Units 4 and 5 which was delivered to Crystal River at an overall lower fuel cost. To deliver the coal to Crystal River, Gulf barge demurrage and cross-Gulf barge rates were added to the cost (confirmed in Jamie Heller's direct testimony, page 12 line 16 through page 13 line 7 and PEF's Answers to Staff's First Set of Interrogatories, question #30, Attachment C). After blending, the actual delivered price of Massey coal to Crystal River was \$2.29/MMBtu (as provided in PEF's Answers to Staff's 2^{nd} Set of Interrogatories, Question No. 13, Attachment A, in Docket 080001). An SO_2 adjustment of \$0.28/MMBtu was made to account for the cost of SO2 in the Massey coal (1.07 lbs. SO2/MMBtu) using the 2007 market SO_2 allowance price of \$524 as quoted during that time frame and provided in Exhibit SAW-5 of Sasha Weintraub's rebuttal testimony. The SO_2 adjustment (\$0.28/MMBtu) was added to the delivered price of \$2.29/MMBtu to arrive at an evaluated delivered price to Crystal River, including SO_2 adjustment, totaling \$2.57/MMBtu.

In comparison, and as shown in PEF's response to Staff's First Set of Interrogatories, question #29, the cost of PRB coal in August 2007 (when the Massey coal was purchased) according to the August 17, 2007 published ICAP brokerage service for market price data was \$11.35/ton (produced in PEF's Response to OPC's First Request for Production of Documents, Question No. 2C, Bates No. PEF-CC-000456). PEF's transportation cost to deliver the PRB coal to the terminal in 2007 (\$32.24/ton) is provided in PEF's response to Staff's First Set of Interrogatories, question #29. The price of the PRB coal delivered accounting for the PRB coal and the transportation price to the terminal equates to \$2.48/MMBtu as documented in PEF's response to Staff's First Set of Interrogatories, Question #29.

To deliver the PRB coal to Crystal River, Gulf barge demurrage and cross-Gulf barge rates must be added to the cost ($0.52/MMBtu) as confirmed in Jamie Heller's direct testimony, page 12, line 16 through page 13, line 7. As a result, the cost to deliver the coal to Crystal River is $3.00/MMBtu (explained in PEF's Answers to Staff's First Set of Interrogatories, Question No. 30).

Next, an evaluation of the SO_2 content is considered. The August 2007 ICAP broker sheet (produced in PEF's Response to OPC's First Request for Production of Documents, Question No. 2C, Bates No. PEF-CC-000456) indicates the market PRB coal contained 0.8 lb. SO_2 (see also Deposition of James N. Heller taken Jan. 16, 2009, Exhibit 3). As with the Massey coal, an adjustment is made to account for the cost of SO2 in this PRB coal. Again using the 2007 market SO_2 allowance price of $524, the PRB coal incurred an SO_2 adjustment of $0.21/MMBtu. The SO_2 adjustment ($0.21/MMBtu) was added to the evaluated delivered price ($3.00) to arrive at a total evaluated delivered price to Crystal River of $3.21/MMBtu.

Thus, this comparison results in an additional cost to purchase PRB coal of $0.64/MMBtu because the difference between PRB coal price ($3.21/MMBtu) and Massey coal price ($2.57/MMBtu) is $0.64/MMBtu. This example, along with the other calculations that PEF performed, confirms that PRB coals were not the cheapest options for the ratepayer no matter what price inputs one uses for an analysis.[3]

(iii) <u>Analysis of PRB Coal Purchased in 2004 for Use in 2006 and 2007</u>

Recognizing that PRB coal is not cost effective under Mr. Heller's analysis or any alternative analysis using actual pricing and actual data as discussed in detail above, OPC

[3] This comparison does not take into account any additional capital costs or incremental barge costs which would make the prices of PRB coal blends even higher (Tr. P. 573-574, L. 23-12).

attempted to rely on a hypothetical purchase of PRB coal in 2004 that would have somehow skipped 2005 and gone into effect for coal deliveries to be made in 2006 and 2007. (Tr. P. 491, L. 21-25; Tr. P. 574, L. 1-3). Specifically, OPC attempted to argue that the Triton Rochelle bid referenced in Mr. Putman's Testimony Exhibit DJP-6 (a PEF bid tabulation sheet from 2004) was more economic. (Tr. P. 491-492, L. 13-3). As the evidence showed at the hearing, though, the Triton Rochelle bid, and any other bid on DJP-6 for that matter, was not cost effective when the actual costs of that bid were considered relative to the alternatives actually selected by PEF. (Tr. P. 149-150, L. 21-3; Tr. P. 219, L. 19-20; Tr. P. 221, L. 16-25; Tr. P. 249, L. 6-13; Tr. P. 576-577, L. 5-5; Tr. P. 577, L. 6-19).

As Mr. Weintraub explained, DJP-6 is a tabulation of 2004 bids received to determine the short list of suppliers with which to begin negotiating contracts, which is typical industry standard. (Tr. P. 576, L. 10-14). Mr. Weintraub testified that coal bids are compared and ranked on spreadsheets like DJP-6 that provide details on the types of coal offered, the offered commodity cost of the coal, *forecasted* transportation costs to deliver the coal to Crystal River, and *forecasted* emission prices, but does not take into account capital upgrades, incremental transportation costs, and other considerations that are not yet know at the time bids are initially received and short listed. (Tr. P. 70, L. 15-21; Tr. P. 576-577, L. 5-19). Indeed, Exhibit DJP-6 necessarily includes *forecasted* transportation costs because at the time the bids were received in 2004, the prices for PEF's new barge contract for 2005, 2006, and 2007 was not yet known. Thus, while PEF used reasonable estimates in DJP-6 for the purpose of short listing bids for potential contract negotiations, actual prices incurred were different than what was on Exhibit DJP-6. (Tr. P. 576-577, L. 18-5). Therefore, simply looking at the DJP-6 bid evaluation spreadsheet to determine whether or not one coal purchase will be cost effective when compared against another without further inquiry is careless and shows a fundamental lack of understanding of PEF's bid evaluation process (Tr. P. 73, L. 1-11; P. 142, L. 11-18; P. 149-150, L. 21-3; P. 153, L. 1-17; P. 506, L. 12-23; P. 571-573, L. 22-14; P. 576-577, L. 15-19; P. 604-605, L. 20-16).

To understand the true cost of the 2004 Triton bid that OPC discussed, Mr. Heller first explained that the coal under this bid was offered for a 3-year term (2005-2007) pursuant to PEF's 2004 RFP. (Tr. P. 209, L. 18-22; Tr. P. 514, L. 9-16; Direct testimony of David Putman, Exhibit No. DJP-6). Thus, to even purchase this coal under OPC's theory, PEF would have had to have ignored the three-year term of this offer and unrealistically assume that Triton would simply ignore 2005 and hold their coal in waiting for almost two years at the same exact price until 2006 came along. (Tr. P. 208, L. 16-21; Tr. P. 209, L. 18-22; Tr. P. 210, L. 5-10; Tr. P. 212, L. 7-9; P. 574, L. 1-3). Of course, OPC presented no evidence that such an assumption would even be possible, much less reasonable.

However, even if one assumes that PEF could have bought coal under the 2004 Trition bid for 2006 and 2007 only, Mr. Weintraub went on to explain that when the full price of the Triton bid is considered, it was not an economic choice when compared to other options.

As Mr. Weintraub explained, the Triton Rochelle coal was offered at $8.25/ton. (Tr. P. 147, L. 12-15; P. 572, L. 21-22). The rail cost to move that coal to the river using an industry standard of 19 cents per mill mile equates to $21.36. (Tr. P. 147, L. 15-19; Direct testimony of James N. Heller, p. 10-11, L. 21-6). In addition, PEF would be required to provide a lease or provide maintenance of those railcars that costs 2 cents per mill mile and equates to $2.50 per ton. (Tr. P. 148, L. 3-9). Added to that is a fee to remove the coal from the railcar and put it in the barge at $1.16 per ton. (Tr. P. 147, L. 20-21; Direct testimony of James N. Heller, p. 11, L.

13-14). The barge rate to bring that coal down the Mississippi River to the New Orleans terminal was $7.62 per ton (Tr. P. 147, L. 21-23; Direct testimony of James N. Heller, p. 11, L. 17-19). A fee of $2.10 per ton is then incurred to remove the coal from the inland barge and put it to ground to be blended (Tr. P. 147-148, L. 24-2). In sum, it would cost $42.99 to bring the Triton coal to the Gulf terminal (Tr. P. 148, L. 24-2). Equating this 8,800 Btu coal on a cents per million basis equals $2.44/MMBtu to bring this coal to the docks in Louisana (Tr. P. 148, L. 14-16). In comparison, Mr. Weintraub demonstrated that PEF's purchases were less expensive than the Triton coal for delivery to the blending docks. (Tr. P. 148, L. 17-25; P. 149, L. 14-20; PEF's Answers to Staff's 1st Set of Interrogatories, Question No. 29). PEF's least expensive purchase was $1.81/MMBtu, and the highest priced purchase was $2.33/MMBtu, both which beat the Triton price of $2.44/MMBtu. (Tr. P. 148, L. 20-25; PEF's Answers to Staff's 1st Set of Interrogatories, Question No. 29).

Moreover, to deliver the Triton coal to Crystal River in 2006, Gulf barge demurrage and cross-Gulf barge rates must be added to the cost as confirmed in Jamie Heller's direct testimony (page 12, line 16 through page 13, line 7). Thus, an additional $11.73/ton is added to the transportation cost, which converts to $2.98/MMBtu for a delivered cost to Crystal River. SO_2 allowance costs also must also be included in the cost of burning the Triton coal. As indicated on Mr. Putman's Exhibit DJP-6, the Triton coal contained 0.8 lb. SO2. Expressed in MMBtu, it incurred an SO_2 adjustment of $0.29/MMBtu using the 2006 market SO_2 allowance price of $731 for the appropriate timeframe. (Tr. P. 572, L. 7-11). The SO_2 adjustment ($0.29/MMBtu) would be added to the delivered price ($2.98) to arrive at a delivered price to Crystal River, including SO_2 adjustment, totaling $3.27/MMBtu for delivery of Triton Rochelle coal to Crystal River in 2006. Compared to PEF's 2006 purchase of Keystone coal of $3.22/MMBtu, the

Keystone coal is the best value.[4] (PEF's Response to Staff's 1st Set of Interrogatories, Question No. 29 and Attachment B).

For 2007, the analysis of the Triton Rochelle coal is largely the same. As was the case in 2006, the 2007 Triton coal was offered at \$8.25/ton. The transportation costs to deliver the coal to the terminal in 2007 was \$32.24/ton (as proposed by Mr. Heller in his direct testimony and as supported in PEF's Answer to Staff's First Set of Interrogatories, Question No. 29A). As in 2006, PEF would incur a railcar lease cost of \$2.50/ton to transport this coal. Added together, the transportation cost to the terminal would be \$34.74/ton (or \$2.44/MMBtu).

To deliver the Triton coal to Crystal River in 2007, Gulf barge demurrage and cross-Gulf barge rates must be added to the cost as confirmed in Jamie Heller's direct testimony (page 12 line 16 through page 13 line 7). Thus, an additional \$9.12/ton is added to the transportation cost, which converts to \$2.96/MMBtu for a delivered cost to Crystal River. Once again, SO_2 allowance costs must also be included in the cost of burning the Triton coal (0.8 lb. from Mr. Putman's Exhibit DJP-6). Expressed in MMBtu, the Triton coal would incur an SO_2 adjustment of \$0.21/MMBtu using the 2007 market SO_2 allowance price of \$524. (Tr. P. 572, L. 7-11). The SO_2 adjustment (\$0.21/MMBtu) would be added to the delivered price (\$2.96) to arrive at a delivered price to Crystal River, including SO_2 adjustment, totaling \$3.17/MMBtu for delivery of Triton Rochelle coal to Crystal River in 2007. Comparing PEF's 2007 purchases of bituminous coal that range from \$2.60/MMBtu to \$2.91/MMBtu, to the evaluated cost of 2007 Triton bid of \$3.17/MMBtu, PEF's procurement decisions once again represent the best economic choice.

So even looking at coal that PEF <u>hypothetically could have</u> purchased in 2004, PEF's purchases are still the least expensive. (Tr. P. 148-149, L. 25-4; P. 149-150, L. 21-3). Wholly

[4] This analysis for 2006 and for 2007 does not take into account additional capital costs, delivery constraints, incremental barge costs, or contract duration penalties for skipping the year 2005 when the bid was effective, which would all make the Triton bid even less economic. (Tr. P. 573-574, L. 24-12).

apart from that fact, not a single party in this proceeding filed testimony asserting that PRB coal blends could have beat the prices of the coal blends that PEF actually burned at CR4 and 5 in 2006 and 2007. (Tr. P. 152, L. 7-15). No one challenged the accuracy of Mr. Weintraub's testimony detailed above, and no one presented any evidence in this case to refute the coal cost comparison evidence provided by Mr. Weintraub. (Tr. P. 152, L. 16-23). The point is, when comparing the cost of PEF's actual coal purchases in 2006 and 2007 to coal off the 2004 coal bid sheet that is DJP-6; or to the price of the PRB coal that PEF actually procured for a 2006 test burn; or to spot prices for PRB coals in 2006 and 2007, PEF's purchases were the least expensive. (Tr. P. 149-150, L. 21-3). Every scenario shows that PEF saved its customers money. (Tr. P. 151, L. 9-17).

(iv) PEF's Ability to Burn PRB Coal and the Future of PRB Coal at CR 4&5

As Mr. Weintraub's testimony indicates, PEF continues to monitor market conditions and strives for the best and most cost-effective fuel options for CR 4&5. (Direct testimony of Sasha Weintraub, P. 12, L. 11-13). Since 2004, PEF has conducted two test burns of PRB coal blends. (Tr. P. 691, L. 10-21). PEF has also amended its environmental permit for CR 4&5 to allow PRB coal blends to be burned. (Tr. P. 141, L. 1-2; Tr. P. 683, L. 24-25; Jan. 19, 2009 Deposition of Sasha Weintraub, P. 50, L. 9-13). Further, PEF has funded a 2009 budget to install a misting and fogging system in the cascade room to minimize dusting from coal lines for higher dusting coals like PRB coal. (Tr. 692-693, L.11-7; Exhibit 59). Mill inerting valves have also been installed for a manual inerting system in both Units 4 and 5 that preserve the optionality to burn PRB coal in the future. (Tr. P. 693, L. 8-13). Other modifications will soon be made to the units such as the installation of new soot blowers, an intelligent soot blowing system, and other installed equipment relating to slagging and fouling, all of which preserve PEF's options to burn PRB coal in the future. (Tr. P. 693, L. 14-24). Thus, while PRB coal blends did not prove to be economic choices in 2006 and 2007, PEF has positioned itself to be ready for the best and most cost effective fuel options for CR 4&5 now, and in the future.

C. Spring Creek and Indonesian Coal Were Not Cost Effective in 2006 and 2007

In apparent recognition of the fact that PRB coal blends were not cost effective in 2006 and 2007, OPC filed testimony on two entirely new types of coal, (Spring Creek and Indonesian coal), that the Commission did not hear evidence on and did not consider in Docket 060658. (Tr. P. 387, L. 5-9; Tr. P. 377, L. 1-4). One need only read the record in this matter, however, to watch OPC's case regarding these two, brand new coals fall apart as it was subjected to scrutiny and questioning from the Commission, Commission Staff, and from PEF. Indeed, this Commission heard OPC's witness:

- Admit that he misunderstood the Commission's refund calculation methodology in Docket 060658, resulting in an error of nearly $34 million (Amended Direct Testimony of David J. Putman, P. 2, L. 10-18);

- Admit that he did not believe Spring Creek coal should have ended up as number one on the evaluation sheet he used as the foundation for his testimony. (Tr. P. 443, L. 22-23; P. 490, L. 15-17);

- Admit that Spring Creek coal may not have been the low-cost supplier for 2006. (Tr. P. 490, L. 17-21);

- Admit that Spring Creek coal would have been outside specified performance coal specifications for CR 4&5 with regard to sodium content. (Tr. P. 521, L. 16 through Tr. P. 525, L. 14);

- Admit that he did not know what elements made up the transportation costs that he used in his testimony. (Tr. P. 382, L. 5-12);

- Admit that even though he had technical concerns with respect to the accuracy of the data he used in his testimony, he used the data anyway because it provided a lower cost number for his case. (Tr. P. 515, L. 2-8);

- Admit that he thinks the Indonesian coal offered to PEF may have been sold to Georgia's Plant Scherer thereby making it unavailable when PEF inquired about the Indonesian coal in 2006. (Tr. P. 385, L. 8-13; Tr. P. 344, L. 17-22; Tr. P. 58, L. 8-19; April 1, 2009 Deposition of Sasha Weintraub, Late-filed Exhibit No. 5).

- Admit that the Indonesian coal purchased by Southern Company for Plant Scherer in 2006 was far more expensive than any coal PEF purchased in 2006 and 2007. (Tr. P. 385, L. 14-21; Tr. P. 476, L. 9-11; Tr. P. 386-387, L. 14-4).

- Admit that he did not know what costs were included in PEF's 2004 bid evaluation spreadsheet that he used as DJP-6 to his testimony. (Tr. P. 506, L. 17-23);

- Admit that he conducted his analysis using outdated forecasted SO2 allowance prices for 2006 and 2007 rather than the actual SO2 allowance prices. (Tr. P. 297, L. 10-24; Tr. P. 298, L. 10-17; Tr. P. 317, L. 8-15; Tr. P. 369-370, L. 18-4; Direct Testimony of David J. Putman, P. 31, L. 10-24; P. 32, L. 10-17);

- Admit that he did not know how SO2 was evaluated or whether or not he had double-counted SO2 allowance damages in his analysis. (Tr. P. 373, L. 2-11);

These admissions alone show that by the conclusion of the hearing in this matter, even OPC's one and only witness believed that PEF either could not have or should not have bought and burned the Spring Creek and Indonesian coal that OPC advanced in its direct testimony in this docket, and the Commission should also reject OPC's assertions based on these admissions as a matter of law.

Equally notable is the fact that in the face of PEF's witnesses filing hundreds of pages of pre-filed rebuttal testimony and documents pointing out the countless errors and omissions in OPC's direct testimony, OPC failed to offer any meaningful cross examination or challenge to PEF's rebuttal witnesses. For example, witness Weintraub, in his rebuttal testimony, filed the following summary outlining the monetary impact of all the errors and omissions that Mr. Putman made in his direct testimony:

Total OPC alleged damages, without interest:	**$ 61,279,193**
Less 2006 increased costs for Spring Creek contract changes	$ 2,326,000
Less 2006 BTU displacement error	$ 14,000,000
Less 2006 capital cost adder of $0.03/mmbtu	$ 233,000
Less 2006 rail delivery constraints for 2006	$ 208,000
Less 2006 omitted transportation charges for Spring Creek coal	$ 5,816,000
Less 2006 SO2 "double dip" for Spring Creek coal	$ 775,000
Less 2007 Memco barge contract default	$ 2,935,000
Less 2007 BTU displacement error	$ 15,200,000
Less 2007 capital cost adder of $0.03/mmbtu	$ 244,000
Less 2007 vessel delivery constraints for Indonesian coal	$ 783,000
Less 2007 omitted transportation costs for PT Adaro	$ 2,360,000
Less 2007 omitted transportation costs for PT Kideco	$ 895,000
Less 2007 SO2 "double dip" for Indonesian coals	$ 9,192,000
Less incremental gulf barge transportation costs	$ 2,161,000
Less correct SO2 tonnage and correct EA values	$ 5,676,000
Total	$ (1,525,000)
Less potential capital cost (worst case)	$176,000,000
	($177,525,000)

(Tr. P. 553, L. 5-26). In response to Mr. Weintraub's detailed analysis and calculations of OPC's errors, mistakes, and omissions, OPC only asked Mr. Weintraub one small series of questions regarding Mr. Putman's assertion that a purchaser can pick and choose years that it wants to buy coal in from a multi-year bid, but OPC otherwise did not even attempt to cross-examine Mr. Weintraub on his rebuttal testimony in any meaningful manner. (Tr. P. 557, L. 25 through Tr. P. 569, L. 2). This is no surprise given the multiple mistakes and omissions discussed above that OPC's own witness Mr. Putman himself admitted.

Similarly, PEF witness Stenger filed 47 pages of pre-filed rebuttal testimony and 14 comprehensive exhibits that explained why PEF could not have burned the Spring Creek and Indonesian coal in 2006 and 2007. In her testimony, Mrs. Stenger concludes that contrary to OPC's assertions, PEF could not have completed its testing process for these two coals until well after the time that OPC asserts that PEF should have purchased and burned them, which renders

OPC's direct testimony moot from an operational and logistical perspective. (Tr. P. 654, L. 9-16; Tr. P. 662, L. 5-13).

In response, OPC only asked witness Stenger three series of questions regarding her assumptions related to PRB coal, the date on which she began the research for her testimony, and whether she had ever personally conducted a test burn. (Tr. P. 669, L. 23 through Tr. P. 675, L 12). Needless to say, none of OPC's limited questions to Mrs. Stenger impeach the credibility of her assertions that PEF could not have burned Spring Creek and Indonesian coals in 2006 and 2007, which leaves Mrs. Stenger's testimony without challenge for all practical and legal purposes.

In summary, PEF's rebuttal witnesses put on substantively unchallenged testimony showing that PEF could not have burned the coal that OPC asserts it should have burned in 2006 and 2007. PEF more than carried its burden of proof which was hardly challenged by OPC, and saved its customers anywhere between $1.5 million to $177 million. (Tr. P. 654, L. 9-16; Tr. P. 662, L. 5-13; Tr. P. 553, L. 5-26). Because this testimony, as well as PEF's direct testimony, was not credibly challenged as discussed in detail above, PEF should prevail in this case as a matter of law, and no damages can or should be assessed against PEF. <u>See</u> <u>Broward County v. Patel</u>, 641 So. 2d 40, 43 (Fla. 1994); <u>Traveler's Express Company v. Crosby</u>, 524 So. 2d 1168 (Fla. 5th DCA 1988); <u>Goodell V. K.T. Enterpries, Ltd.</u>, 394 So. 2d 1087, 1088-89 (1st DCA 1981); <u>Acosta v. Daughtry</u>, 268 So 2d 416, 423 (Fla. 3d DCA 1972).

II. Post-Hearing Statement of Issues and Positions

<u>ISSUE 1</u>: Did the imprudences in PEF's fuel procurement activities determined in Order PSC-07-0816-FOF-EI result in the costs of coal actually delivered to Crystal River Units 4 and 5 during 2006 and 2007 being unreasonably high?

No. To the contrary, PEF's coal procurement activities saved PEF's customers millions of dollars in fuel costs during 2006 and 2007.

ISSUE 1A: How should the reasonableness of the costs of coal delivered to Crystal River Units 4 and 5 during 2006 and 2007 be measured?

Pursuant to the "Cost Effectiveness Test" performed by Staff in their Primary Recommendation in Docket 060658, as used in Order 07-0816-FOF-EI, pages 37-39 and Attachment A, and as reflected in PEF's testimony in this docket.

ISSUE 1B: What candidates for alternative coal purchases should the Commission consider in evaluating whether more economical coal was available for delivery to Crystal River Units 4 and 5 during 2006?

*None, other than the Wyoming PRB coal that the Commission heard evidence on and considered in Docket 060658. *

ISSUE 1C: By what amount, if any, were the costs of coal actually delivered to Crystal River Units 4 and 5 unreasonably high in 2006?

None. To the contrary, PEF's coal procurement activities saved PEF's customers millions of dollars in fuel costs during 2006 and 2007.

ISSUE 1D: What candidates for alternative coal purchases should the Commission consider in evaluating whether more economical coal was available for delivery to Crystal River Units 4 and 5 during 2007?

*None, other than the Wyoming PRB coal that the Commission heard evidence on and considered in Docket 060658. *

ISSUE 1E: By what amount, if any, were the costs of coal actually delivered to Crystal River Units 4 and 5 unreasonably high in 2007?

None. To the contrary, PEF's coal procurement activities saved PEF's customers millions of dollars in fuel costs during 2006 and 2007.

ISSUE 2: If the Commission determines that the costs of coal delivered to Crystal River Units 4 and 5 during 2006 and 2007 were unreasonably high, should it require PEF to issue a refund to its customers? If so, in what amount?

No. Based on the evidence that the Commission heard in this matter, such a determination would not be based on competent, credible evidence and would constitute reversible error.

ISSUE 3: **Based on the evidence of PEF's fuel procurement approach and activities as they relate to Crystal River 4 and 5, what additional action, if any, should the Commission take in this docket?**

The Commission should close this docket.

Respectfully submitted this 26th day of May, 2009.

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY a true and correct copy of the foregoing has been furnished to counsel and parties of record as indicated below via U.S. Mail this 26th day of May, 2009.

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