

Marguerite McLean

100009-EI

From: WOODS.MONICA [WOODS.MONICA@leg.state.fl.us]
Sent: Tuesday, August 03, 2010 3:30 PM
To: Filings@psc.state.fl.us
Cc: Charles Rehwinkel; McGLOTHLIN.JOSEPH; Alex Glenn; Anna Williams; Bill Jacobs; Blaise N. Huhta; Bryan J. Anderson; Cary Cook; Dianne Triplett; F. Alvin Taylor; Gary A. Davis ; J. Burnett; J. McWhirter; James Brew; Jeanne Costello; Jessica Cano; John C. Moyle, Jr.; Keino Young; Ken Hoffman; Lisa Bennett; M. Walls; Matthew R. Bernier; Paul Lewis; Randy B. Miller; Schef Wright; Shayla McNeill; Vicki Kaufaman; Wade Litchfield
Subject: Prehearing Statement of the Office of Public Counsel
Attachments: Dkt. 100009-EI Prehearing Statement of the Office of Public Counsel.pdf; Dkt. 100009-EI Prehearing Statement of the Office of Public Counsel.docx

Electric Filing

a. Person responsible for this electronic filing:

Charles Rehwinkel, Associate Public Counsel
Office of Public Counsel
c/o The Florida Legislature
111 West Madison Street, Room 812
Tallahassee, FL 32399-1400
(850) 488-9330
rehwinkel.charles@leg.state.fl.us

b. Docket No. 100009-EI

In re: Nuclear Power Plant Cost Recovery Clause.

c. Document being filed on behalf of Office of Public Counsel

d. There are a total of 17 pages.

e. The document attached for electronic filing is the Prehearing Statement of the Office of Public Counsel. Thank you for your attention and cooperation to this request.

Monica R. Woods
Administrative Assistant to Charles J. Rehwinkel
Office of Public Counsel
Phone #: 488-9330
Fax#: 487-6419

DOCUMENT NO. DATE

06330-10 8/3/10
FPSC - COMMISSION CLERK

8/3/2010

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Nuclear Cost Recovery
Clause.

DOCKET NO.: 100009-EI

FILED: August 03, 2010

PREHEARING STATEMENT OF THE OFFICE OF PUBLIC COUNSEL

The Citizens of the State of Florida, through the Office of Public Counsel, pursuant to the Order Establishing Procedure in this docket, Order No. PSC-10-0115-PCO-EI, issued February 25, 2010, hereby submit this Prehearing Statement.

APPEARANCES:

Joseph A. McGlothlin
Associate Public Counsel
Office of Public Counsel
c/o The Florida Legislature
111 West Madison Street, Room 812
Tallahassee, Florida 32399-1400
On behalf of the Citizens of the State of Florida

Charles J. Rehwinkel
Associate Public Counsel
Office of Public Counsel
c/o The Florida Legislature
111 West Madison Street, Room 812
Tallahassee, Florida 32399-1400
On behalf of the Citizens of the State of Florida

1. WITNESSES:

The Citizens intend to call the following witnesses, who will address the issues indicated:

NAME

William R. Jacobs, Jr., Ph.D

ISSUES

3(Non-Legal), 5, 7, 21

DOCUMENT NO. DATE

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FPSC - COMMISSION CLERK

2. EXHIBITS:

Through William R. Jacobs, Jr., Ph.D., the Citizens intend to introduce the following exhibits, which can be identified on a composite basis:

FPL

WRJ(FPL)-1	Resume of William R. Jacobs, Jr.
WRJ(FPL)-2	Referenced Documents

PROGRESS

WRJ(PEF)-1	Resume of William R. Jacobs, Jr.
WRJ(PEF)-2	Resumes of James P. McGaughy and Cary Cook
WRJ(PEF)-3	Referenced Documents

3. STATEMENT OF BASIC POSITION

FPL

FPL's estimates of costs to complete its uprate projects represent extremely expensive capacity additions. OPC supports Staff's suggestion of a separate docket within which to examine the reasonableness of FPL's uprate-related costs.

The methodology with which FPL measures the economic feasibility of its uprate projects is flawed. Treating costs incurred to date as irrelevant to the economic feasibility does not accurately portray feasibility in a situation in which the "target" costs of completion continue to increase rapidly. The Commission should prescribe an alternative methodology similar to the "breakeven" analysis that FPL employs for new nuclear units to more realistically depict the

economic feasibility of the uprate projects.

Currently, because the utilities have no explicit exposure to the possibility of investment loss, they have no adequate incentive to discipline and control costs. As costs and estimates of costs escalate, total project costs can reach levels beyond which it is no longer reasonable or fair to place all risks on customers. With the input of parties, the Commission should devise a risk-sharing plan that will accomplish greater cost controls and protect customers from the consequences of excessive risks.

PEF

PEF is seeking recovery of costs for two large nuclear-related projects. Each project is being submitted for approved recovery of costs before any of the related electricity is ever generated. Each project has varying degrees of uncertainty that place ratepayer funds at increased risk.

The Levy Nuclear Plant (LNP) Project is now projected to be delayed for at least 5 years beyond the Commercial Operation Date (COD) identified in the LNP Determination of Need order. OPC contends that based on the evidence in this case, the company's chosen option of pursuing the Combined License (COL), while essentially "mothballing" the rest of the previously planned construction component of the project, demonstrates that the LNP may no longer be eligible for advance recovery. In light of the significant risks that PEF claims has caused the 5 year delay, PEF has a heavy burden of demonstrating that additional customer funds should be spent on a project with a very uncertain future. If it finds that the LNP project remains eligible for advance recovery, the Commission should nevertheless require PEF to further justify its chosen option

and demonstrate that advance-paying ratepayers have been given the appropriate priority in the decision making process. Additionally, the Commission should consider deferring cost recovery or placing recovery of costs above the total costs of cancellation (PEF's Option 1) at risk pending further analysis of the likelihood of continuing with the LNP.

The OPC contends that PEF has not met its burden of demonstrating that it has removed all transmission related costs for projects that are now being continued as unrelated to the LNP project, but which were originally included in the overall LNP project cost estimate

With regard to the CR3 Extended Uprate (EPU), PEF will have spent have spent over two-thirds of the total cost of the project before the License Amendment Request (LAR) will have been filed with the NRC. This PEF strategy introduces a significant degree of risk into the overall viability of the overall EPU project with regard to the ultimate NRC-licensed increased power level of the plant. PEF should be held accountable for the decision that it made regarding the timing of the licensing relative to the expenditure of advance payment ratepayer funds. The Commission should put PEF on notice that its decision related to the timing of expenditures relative to the NRC decision on its yet-to-be-submitted license amendment request (LAR) is still subject to a prudency review based on the facts and circumstances known to the company management at the time they decided to spend customer-provided funds. The OPC also submits that certain costs related to the preparation of the LAR and other increases in project cost may be imprudent and or inadequately justified and should be disallowed for advance recovery.

4. STATEMENT OF FACTUAL ISSUES AND POSITIONS

Legal Issues

ISSUE 1 (legal): Do FPL's activities related to Turkey Point Units 6 & 7 qualify as "siting, design, licensing, and construction" of a nuclear power plant as contemplated by Section 366.93, F.S.?

OPC: At this juncture, OPC does not contend that FPL's activities fail to satisfy the definition of the statute such that the Commission should deny FPL's petition to recover costs. OPC reserves the right to modify its position in future proceedings, based on a review of management's decisions and courses of action.

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

OPC: No. The LNP project appears at this time no longer to meet the letter and intent of Section 366.93, Florida Statutes, which allows for advance recovery from customers of projects that will result in the construction of a nuclear power plant. PEF's unchallenged testimony in this case demonstrates in that contrast to its assertions in the need determination docket, initial internal authorizations and prior years' testimonies, PEF is reversing course and the Company is no longer actively pursuing the construction of a nuclear power plant nor actively investing in nuclear generation related to the LNP project. Pursuit of a COL alone, with no manifested intent to build a power plant does not meet the test of the statute.

While, and to the extent that PEF is in this mode with respect to the LNP project, no further advance recovery should be allowed of costs incurred after the May 1, 2010 announcement that PEF chose the option to suspend all but continuation of the COL pursuit portion of original LNP project plan.

Legal & Policy Issues

ISSUE 3 (legal): Does the Commission have the authority to require a “risk sharing” mechanism that would provide an incentive for a utility to complete a project within an appropriate, established cost threshold? If so, what action, if any, should the Commission take?

OPC: Yes. The Commission has broad authority to insure that the purpose and intent of the rule and statute are met in order to protect customers from imprudent expenditures. Neither the statute nor the Rule contain any prohibition on the Commission utilizing its broad authority to keep costs from escalating to dimensions beyond which it would be unfair to require customers to bear all of the risk, especially when the existing projects face significant uncertainty .

The Commission should place interested parties on notice of its intent to develop such a “risk sharing” mechanism in future proceedings, and provide the parties an opportunity to attempt to cooperatively develop and present such a mechanism. A risk sharing mechanism would provide a strong incentive to utilities to control costs because they would have some “skin in the game”—an incentive which is missing at the present. (Jacobs)

Company Specific Issues

Progress Energy Florida, Inc

ISSUE 4: Should the Commission find that for the year 2009, PEF's accounting and costs oversight controls were reasonable and prudent for the Levy Units 1 & 2 project and the Crystal River Unit 3 Uprate project?

OPC: With respect to the uprate projects, OPC believes there are indications of inadequate management and contracting oversight controls.

ISSUE 5: Should the Commission find that for the year 2009, PEF's project management, contracting, and oversight controls were reasonable and prudent for the Levy Units 1 & 2 project and the Crystal River Unit 3 Uprate project?

OPC: No. The Commission should put PEF on notice that its decision related to the timing of expenditures relative to the NRC decision on its yet-to-be- submitted license amendment request (LAR) is still subject to a prudency review based on the facts and circumstances known to the company management at the time they decided to spend customer-provided funds. (Jacobs)

PEF has not demonstrated that costs (company and contractor) related to the preparation of the CR3 EPU LAR are prudent and reasonable. Company documents indicate that excessive and/or duplicative costs have been incurred due to inadequate oversight of the preparation of the LAR.

ISSUE 6: Should the Commission approve what PEF has submitted as its annual detailed analysis of the long-term feasibility of completing the Levy Units 1 & 2 project, as provided for in Rule 25-6.0423, F.A.C? If not, what action, if any, should the Commission take?

OPC: No. Due to the tenuous nature of the LNP project, the Commission should require additional analysis of the feasibility of the overall project based on concerns raised by all witnesses in this docket.

ISSUE 7: Is PEF's decision to continue pursuing a Combined Operating License from the Nuclear Regulatory Commission for Levy Units 1 & 2 reasonable? If not, what action, if any, should the Commission take?

OPC: PEF has not demonstrated that in choosing its selected option (PEF Option 3), it has evaluated all scenarios associated with the five year delay in the proposed commercial operation date of what remains of the LNP Project. PEF has not adequately demonstrated that the potential cost exposure of customers in the event of project cancellation has been adequately considered or mitigated. The Commission should require PEF to demonstrate that it has chosen the option for cost recovery purposes that best serves the customers who are making unprecedented advance payment for a project that may never be completed.

The Commission should consider deferring cost recovery or placing cost recovery of costs above the total costs of cancellation (PEF's Option 1) at risk pending further analysis of this likelihood of continuing with the LNP. (Jacobs)

ISSUE 8: Should the Commission approve what PEF has submitted as its annual detailed analysis of the long-term feasibility of completing the Crystal River Unit 3 Uprate project, as provided for in Rule 25-6.0423, F.A.C? If not, what action, if any, should the Commission take?

OPC: No. The Commission should require PEF to submit a feasibility analysis that evaluates the project based on likely NRC-approved power levels.

ISSUE 9: What system and jurisdictional amounts should the Commission approve as PEF's final 2009 prudently incurred costs and final true-up amounts for the Crystal River Unit 3 Uprate project?

OPC: PEF has not adequately explained and justified a material variance in total CR3 EPU project costs. PEF has not met the requirements of Rule 25-6.0423(8)(D), which requires annual variance explanations comparing current and prior period to the most recent projections. By netting unrelated accounting changes against actual significant cost escalations, PEF has not meaningfully explained and justified the cost increases. The Commission should not allow additional EPU cost recovery absent justification for the significant project cost escalation shown on Bates No. 10NC-OPCPOD1-40-000522-000523.

Additionally, PEF has not demonstrated that costs (company and contractor) related to the preparation of the CR3 EPU LAR are prudent and reasonable. Company documents indicate that excessive and/or duplicative costs have been incurred due to inadequate oversight of the preparation of the LAR.

ISSUE 10: What system and jurisdictional amounts should the Commission approve as PEF's reasonably estimated 2010 costs and estimated true-up amounts for the Crystal River Unit 3 Uprate project?

OPC: No position pending resolution of other issues.

ISSUE 11: What system and jurisdictional amounts should the Commission approve as PEF's reasonably projected 2011 costs for the Crystal River Unit 3 Uprate project?

OPC: No position pending resolution of other issues.

ISSUE 13: What system and jurisdictional amounts should the Commission approve as PEF's final 2009 prudently incurred costs and final true-up amounts for the Levy Units 1 & 2 project?

OPC: PEF has not demonstrated that all the costs related to its non-LNP transmission needs have been appropriately removed from requested cost recovery in this docket. Furthermore, any costs that were incurred for a project or projects such as, but not limited to, Central Florida substation, 230KV step down, or non-LNP NERC requirements should be refunded to customers.

ISSUE 14: What system and jurisdictional amounts should the Commission approve as reasonably estimated 2010 costs and estimated true-up amounts for PEF's Levy Units 1 & 2 project?

OPC: Pending additional analysis and justification pursuant to Issue 7, the Commission

should defer recovery of a confidential amount of excess dollars related to the 2010 costs that will be incurred greater than the Option 1 costs.

ISSUE 15: What system and jurisdictional amounts should the Commission approve as reasonably projected 2011 costs for PEF's Levy Units 1 & 2 project?

OPC: Pending additional analysis and justification pursuant to Issue 7, the Commission should defer recovery of a confidential amount of excess dollars related to the 2011 costs that will be incurred greater than the Option 1 costs.

ISSUE 16: What is the total jurisdictional amount to be included in establishing PEF's 2011 Capacity Cost Recovery Clause factor?

OPC: No position pending resolution of other issues.

Company Specific Issues

Florida Power & Light Company's Specific Issues

ISSUE 17: Should the Commission find that for the year 2009, FPL's accounting and costs oversight controls were reasonable and prudent for the Turkey Point Units 6 & 7 project and the Extended Power Uprate project?

OPC: For the uprates, OPC believes there are indications of inadequate cost oversight controls.

ISSUE 18: Should the Commission find that for the year 2009, FPL's project management, contracting, and oversight controls were reasonable and prudent for the Turkey Point Units 6 & 7 project and the Extended Power Uprate project?

OPC: With respect to the uprate projects, OPC believes there are indications of inadequate management and contracting oversight controls.

ISSUE 19: Should the Commission approve what FPL has submitted as its annual detailed analysis of the long-term feasibility of completing the Turkey Point 6 & 7 project, as provided for in Rule 25-6.0423, F.A.C? If not, what action, if any, should the Commission take?

OPC: No position at this time.

ISSUE 20: Is FPL's decision to continue pursuing a Combined Operating License from the Nuclear Regulatory Commission for Turkey Point Units 6 & 7 reasonable? If not, what action, if any, should the Commission take?

OPC: No position at this time.

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

OPC: No. The feasibility methodology employed by FPL to test the ongoing economic feasibility of FPL's uprate projects excludes amounts already spent from

consideration, treating them instead as “sunk costs.” This approach is appropriate in a situation in which the estimated cost of completion is not subject to substantial variations over time. It is inappropriate in a situation in which the estimated cost of completion continuously and substantially increases, such as is the case with FPL’s uprate projects, because it could result in an indication of ongoing economic feasibility even though the project ultimately may not be feasible from an overall cost standpoint. A breakeven analysis similar to the one that FPL applies to the new nuclear unit projects would be more appropriate.
(Jacobs)

ISSUE 22: What system and jurisdictional amounts should the Commission approve as FPL’s final 2009 prudently incurred costs and final true-up amounts for the Extended Power Uprate project?

OPC: OPC agrees with the Staff’s proposal to conduct a more detailed examination of the costs in a separate docket.

ISSUE 23: What system and jurisdictional amounts should the Commission approve as FPL’s reasonable actual/estimated 2010 costs and estimated true-up amounts for the Extended Power Uprate project?

OPC: OPC agrees with Staff’s proposal to conduct a more detailed examination of the costs in a separate docket.

ISSUE 24: What system and jurisdictional amounts should the Commission approve as FPL's reasonably projected 2011 costs for the Extended Power Uprate project?

OPC: No position at this time.

ISSUE 25: What system and jurisdictional amounts should the Commission approve as FPL's final 2009 prudently incurred costs and final true-up amounts for the Turkey Point Units 6 & 7 project?

OPC: No position.

ISSUE 26: What system and jurisdictional amounts should the Commission approve as reasonably estimated 2010 costs and estimated true-up amounts for FPL's Turkey Point Units 6 & 7 project?

OPC: No position.

ISSUE 27: What system and jurisdictional amounts should the Commission approve as reasonably projected 2011 costs for FPL's Turkey Point Units 6 & 7 project?

OPC: No position.

ISSUE 28: What is the total jurisdictional amount to be included in establishing FPL's 2011 Capacity Cost Recovery Clause factor?

OPC: The appropriate amount will be a function of the reasonable uprate costs that will be determined in the separate proceeding proposed by Staff.

5. STIPULATED ISSUES:

None.

6. PENDING MOTIONS:

None.

7. STATEMENT OF PARTY'S PENDING REQUESTS OR CLAIMS FOR CONFIDENTIALITY:

FPL has sought confidential classification of much of Staff's Audit Report. In its response, OPC contends that FPL's request is overbroad. OPC has asked the Prehearing Officer to conduct an in camera examination of the document.

OPC intends to participate in the confidentiality evidentiary hearing as set out in Order No. PSC-10-0482-PCO-EI.

8. OBJECTIONS TO QUALIFICATION OF WITNESSES AS AN EXPERT:

None at this time.

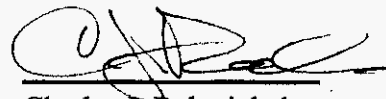
9. STATEMENT OF COMPLIANCE WITH ORDER ESTABLISHING PROCEDURE:

There are no requirements of the Order Establishing Procedure with which the Office of Public Counsel cannot comply.

Dated this 3rd day of August, 2010.

Respectfully submitted,

J.R. Kelly
Public Counsel

A handwritten signature in black ink, appearing to read 'C. Rehwinkel', written over a horizontal line.

Charles J. Rehwinkel
Associate Public Counsel

Office of Public Counsel
c/o The Florida Legislature
111 West Madison Street
Room 812
Tallahassee, FL 32399-1400

Attorney for the Citizens
of the State of Florida

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and foregoing **PREHEARING STATEMENT OF THE OFFICE OF PUBLIC COUNSEL** has been furnished by electronic mail and U.S. Mail on this 3rd day of August, 2010, to the following:

John T. Burnett /Alexander Glenn
Progress Energy Service Company, LLC
P.O. Box 14042
St. Petersburg, FL 33733-4042

John McWhirter, Jr.
c/o McWhirter Law Firm
Florida Industrial Power Users Group
PO Box 3350
Tampa, FL 33601

Keino Young/Lisa Bennett
Anna Williams/Katherine
Jackson/Keven Leveille
2540 Shumard Oak Blvd.
Tallahassee, FL 32399-0850

Mr. Paul Lewis, Jr.
Progress Energy Florida, Inc.
106 East College Ave, Suite 800
Tallahassee, FL 32301-7740

Vicki G. Kaufman/Jon C. Moyle, Jr.
Florida Industrial Power Users Group
118 North Gadsden Street
Tallahassee, FL 32301

Mr. Wade Litchfield
Florida Power & Light Company
215 South Monroe St., Suite 810
Tallahassee, FL 32301-1859

Matthew R. Bernier
Carlton Fields Law Firm
215 South Monroe St., Suite 500
Tallahassee, FL 32301-1866

J. Michael Walls/Blaise N. Huhta
Carlton Fields Law Firm
P.O. Box 3239
Tampa, FL 33601-3239

Randy B. Miller
White Springs Agriculture
Chemicals, Inc
P.O. Box 300
White Springs, FL 32096

Dianne M. Tripplett
229 1st Avenue N PEF-152
St. Petersburg, FL 33701

Bryan J. Anderson/Jessica Cano/ Garson R.
Florida Power and Light Company
700 Universe Blvd
Juno Beach, FL 33418

James W. Brew/F. Alvin Taylor
1025 Thomas Jefferson St. NW, 8th
Flo, West Tower
Washington, DC 20007

Shayla L. McNeill, Capt, USAF
Federal Executive Agencies
c/o AFLSA/JACL-ULT
139 Barnes Drive, Suite 1
Tyndall AFB, FL 32403-5319


Gary A. Davis & James Whitlock
Gary A. Davis & Associates
P.O. Box 649
Hot Springs, NC 28743

Southern Alliance for Clean Energy
P.O. Box 1842
Knoxville, TN 37901

Robert H. Smith
11340 Heron Bay Blvd #2523
Coral Springs, FL 33076

Consumer Florida Action Network
Bill Newton, Executive Director
3006 W. Kennedy Blvd, Suite B
Tampa. FL 33609

Ken Hoffman
Florida Power & Light Co.
215 S. Monroe St., Suite 810
Tallahassee, FL 32301-1859


Charles J. Rehwinkel
Associate Public Counsel