PROGRESS ENERGY FLORIDA
In re: Nuclear Cost Recovery Clause
Docket 100009-EI
Twenty-Sixth
Request for Confidential Classification

REDACTED

Exhibit B

REDACTED

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Nuclear Power Plant Cost Recovery Clause	Docket No. 100009-EI Submitted for Filing: Sept. 10, 2010

PROGRESS ENERGY FLORIDA, INC.'S POST-HEARING STATEMENT OF ISSUES AND POSITIONS AND ARGUMENTS IN SUPPORT OF ITS PETITION TO RECOVER COSTS OF THE CRYSTAL RIVER UNIT 3 UPRATE AND THE LEVY NUCLEAR PROJECTS AS PROVIDED IN SECTION 366.93, FLORIDA STATUTES, AND RULE 25-6.0423, F.A.C.

Pursuant to Section 366.93, Florida Statutes, and Rule 25-6.0423, Florida Administrative Code, Progress Energy Florida, Inc. ("PEF" or the "Company"), petitioned the Florida Public Service Commission ("FPSC" or the "Commission"), to recover its costs for the Crystal River Unit 3 Uprate Project ("CR3 Uprate") and the Levy Nuclear Project ("LNP") through the Nuclear Cost Recovery Clause ("NCRC"). The Commission held a hearing to consider PEF's cost recovery request on August 24-27, 2010. PEF submits that the record in this case conclusively demonstrates that the requirements of Section 366.93 and Rule 25-6.0423 have been met, that there is no credible dispute as to the respective prudence and reasonableness of PEF's costs, and that the Commission should therefore grant PEF's request.

In accordance with Prehearing Order No. PSC-10-0538-PHO-EI, PEF submits its Post-Hearing Statement of Issues and Positions and Arguments in Support of its Petition to Recover Costs of the CR3 Uprate and the LNP.

I. PEF'S BASIC POSITION

In this proceeding the Commission shall decide: (1) whether PEF's LNP 2009 costs were prudent; (2) whether PEF's LNP actual/estimated costs for 2010 and projected costs for 2011 are reasonable; (3) whether PEF's CR3 Uprate project costs for 2009 were prudent; (4) whether PEF's CR3 Uprate actual/estimated costs for 2010 and projected costs for 2011 are reasonable;

(5) the long-term feasibility of completing the LNP; and (6) the long-term feasibility of completing the CR3 Uprate project.

In support of its Petition, the Company submitted pre-filed direct testimony and exhibits, rebuttal testimony and exhibits, and detailed Nuclear Filing Requirement ("NFR") schedules for each category of costs, by year, for both the CR3 Uprate and the LNP. PEF's cost recovery request was further subject to Staff audits and discovery by Staff and multiple Intervenors. Staff audited PEF's project management, contracting, and oversight controls and PEF's accounting and cost oversight controls through two separate extensive audits. PEF produced thousands of pages of documents in response to audit requests from Commission Staff auditors, and presented numerous project personnel for interviews. PEF also responded to over 169 interrogatories, produced over 33,000 pages of documents in response to discovery requests, and produced three witnesses for deposition. Finally, a two-day evidentiary hearing was conducted involving 14 witnesses and the introduction in evidence of 239 exhibits.

The evidence demonstrates that PEF's actual 2009 LNP and CR3 Uprate costs were prudent and that PEF's 2010 and 2011 costs for the LNP and CR3 Uprate are reasonable. The evidence further conclusively demonstrates the long-term feasibility of completing both the LNP and CR3 Uprate projects. As a result, the Commission should approve PEF's request for cost recovery for its CR3 Uprate and LNP costs through the Capacity Cost Recovery Clause factor.

II. PEF'S POST-HEARING STATEMENT OF ISSUES AND POSITIONS AND ARGUMENTS IN SUPPPORT OF SPECIFIC POSITIONS.[1]

A. LEGAL/POLICY ISSUES

ISSUE 2: **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.?**

[1] PEF has not included Issues relating solely to FPL in this brief.

PEF Position:

Yes. PEF's LNP activities satisfy Section 366.93 which provides that all prudently incurred "costs" associated with siting, design, licensing, and construction of a nuclear power plant are recoverable. The Florida Legislature defined "costs" to include "all capital investments, including rate of return, any applicable taxes, and all expenses, including operation and maintenance expenses, related to or resulting from the siting, licensing, design, construction, or operation of the nuclear power plant." Costs for PEF's licensing and other LNP activities clearly satisfy this statutory definition.

PEF's LNP activities are for the "siting, design, licensing and construction" of a nuclear power plant pursuant to Section 366.93, Florida Statutes.

PEF's current LNP activities qualify as "siting, design, licensing, and construction" of a nuclear power plant under the provisions of Section 366.93, Florida Statutes, Rule 25-6.0423, F.A.C., and the Commission's consistent application of the statute and rule since the statute was enacted and the rule adopted. The Office of Public Counsel ("OPC") claims that PEF's current LNP activities no longer meet the "letter" or intent of the statute because OPC erroneously alleges that PEF is only pursuing the combined operating license ("COL") for the LNP with no present, active investment in building or intent to build the Levy nuclear power plants. (Prehearing Order No. PSC-10-0538-PHO-EI, p. 22). OPC's claim is factually and legally incorrect.

Mr. John Elnitsky and Mr. Jeff Lyash made it clear in both their written and oral testimony that PEF currently intends to build the Levy nuclear power plants and is actively pursing investment in the LNP for that purpose. (T. 868-77, 921, 976, 1034-35, 1104, 1127-29, 1146-47, 1207-08, 1210-11; Ex. #239, pp. 18, 21, 25, 229-30; Ex. #218, pp. 183-84). If PEF did not intend to build the nuclear power plants, PEF would have terminated the Engineering, Procurement, and Construction ("EPC") agreement for the LNP and cancelled the project. (T. 1110-11; Ex. #239, p. 55). Instead, PEF decided to continue the project. (T. 868-77, 1034-35). PEF still has an EPC agreement to build the Levy nuclear power plants. (T. 1087, 1104). PEF

did amend the EPC agreement to continue work on the LNP on a slower pace, but that EPC agreement to build the Levy units is still in place and PEF is actively pursuing the project. (T. 1107-15, 1087).

In 2010 and 2011, PEF will continue work on the Combined Operating License Application ("COLA") with the Nuclear Regulatory Commission ("NRC"). (T. 563-64). PEF will also: (i) continue wetland activities work with the Florida Department of Environmental Protection ("DEP") and the United States Army Corps of Engineers ("USACE"); (ii) manage, supervise, and support long lead material vendor work; (iii) continue AP1000 design support and work; and (iv) engage in shared construction program work such as module design and construction initiatives with Westinghouse and Shaw, Stone, and Webster (the "Consortium"), among other activities. (T. 563-64). OPC introduced no evidence to contradict the fact that work on these activities on the LNP is taking place and will take place throughout 2010 and 2011.[2]

The evidence demonstrates that the Company currently intends to build the Levy nuclear power plants and that PEF is actively engaged in work on the project in addition to the COLA licensing activities. (T. 563-70).[3] PEF's current investment in the project simply reflects the

[2] OPC did question Ms. Hardison regarding certain revisions to the LNP master plan schedule in Exhibit 209 that reflects that project schedules for activities other than licensing were on hold through mid-February 2010. (T. 580-81). But, as Ms. Hardison explained, these revisions to the LNP master plan through mid-February 2010 merely reflected that the construction activity schedules from the original EPC agreement project schedule were on hold pending the Company's decision to continue with the project. (T. 584-87). This does not mean that all work but the COLA licensing activities had stopped. In fact, LNP work continues with the Company's decision to continue the project. (T. 563-70).

[3] OPC placed in evidence several internal project management and management presentation documents that reference joint ownership that OPC selected from all of PEF's project management and management presentation documents. (Exs. 213, 223, 224, 225, 227, 228, 229, 230, 231, 231, 233, 234, 236, 237). Some of these selected documents reflect targets for joint ownership in the LNP to continue the project, or financial group presentations reflecting targeted joint ownership to proceed with the project beyond pursuit of the COL for the LNP in the immediate aftermath of the financial market meltdown at the height of the recession. (Ex. #234, #237). OPC may erroneously claim these show the Company intends to pursue only the LNP COL without joint ownership. But OPC failed to ask PEF's management witnesses, Mr. Elnitsky and Mr. Lyash, about them at the hearing or in their depositions, which OPC also placed in evidence. The reason OPC failed to ask Mr. Elnitsky and Mr. Lyash about these selected presentations is that OPC knows they do not reflect the Company's decision which was to amend the

slower pace of work on the project consistent with the current planned in-service dates for the nuclear power plants in 2021 and 2022. (T. 562-63, 868-69, 876). The undisputed evidence clearly demonstrates the costs of PEF's activities to continue with the LNP on this slower pace are recoverable under the nuclear cost recovery statute and rule if they are prudently incurred.

Even if PEF were engaged in licensing activities only -- which is not the case -- PEF's costs would be legally recoverable under the statute and rule if prudently incurred. OPC's apparent construction of Section 366.93 that the conjunction "and" in the statute requires all of the identified activities – siting, design, licensing, "and" construction – to take place at the same time for the costs for any of these activities to be recovered is legally incorrect, inconsistent with the legislative intent, defies common sense, and it is inconsistent with the Commission's prior application of the statute and rule.

The statute provides for recovery of "costs" incurred in siting, design, licensing "and" construction of a nuclear power plant.[4] §366.93(2), Fla. Stats. The Florida Legislature specifically defined "costs" to include "all capital investments, including rate of return, any applicable taxes, and all expenses, including operation and maintenance expenses, related to or resulting from the siting, licensing, design, construction, or operation of the nuclear power plant." §366.93(1)(a), Fla. Stats. (emphasis added).[5] The reference to the identified nuclear power plant development activities, therefore, cannot be read in isolation from the express intent in the same sentence to provide for the express recovery of the "costs" of these activities. When the defined "costs" are read together with the identified activities, the statute clearly provides for

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EPC agreement and continue with the project. The Company's senior management evaluation process and ultimate decision to continue with the project now on a slower pace toward in-service dates in 2021 and 2022 are reflected in the February 15 and March 8, 2010 management presentations included as exhibits JL-6 and JE-2 to the testimony of Mr. Lyash and Mr. Elnitsky and explained in their testimony in evidence. (Hearing Exhibits #30 and #22 respectively). This evidence conclusively demonstrates the Company made the decision to continue with the project and currently intends to build the LNP.

[4] Section 366.93 also provides for the recovery of costs for associated transmission facilities. §366.93(2), Fla. Stats.

[5] The Commission adopted the same definition of "costs" in the rule. Rule 25-6.0423(2)(d), F.A.C.

cost recovery for such activities whether or not those activities take place by themselves or in sequence or combination with other identified nuclear power plant activities.

Second, the Florida Legislature enacted Section 366.93 in 2006 to encourage the development of nuclear generation in the State. The Florida Legislature specifically directed the Commission to establish alternative cost recovery mechanisms for "costs" incurred in the siting, design, licensing, and construction of nuclear power plants provided that "[s]uch mechanisms shall be designed to promote utility investment in nuclear ... power plants and allow for the recovery in rates of all prudently incurred costs." §366.93(2), Fla. Stats. (emphasis added).[6] The legislative intent to promote utility investment in nuclear power plants through cost recovery mechanisms that allow for the recovery of costs prudently incurred for all activities associated with the development of nuclear power plants is clear. The rule must provide for the recovery of "all" costs prudently incurred for nuclear power plant activities, regardless of when those activities occur. This is the only construction consistent with the express legislative intent to promote utility investment in nuclear power plants by providing for recovery of all prudently incurred costs for all of the identified nuclear power plant development activities.

OPC's construction requires the utility to incur costs for all of the identified activities for any costs to be recovered. This construction is contrary to the express legislative intent to promote utility investment in nuclear power plants. There will be times in the development of new nuclear power plants when it would be impossible for costs to be incurred for all of the identified activities in the statute. Early in a new nuclear power plant project, for example, siting and licensing costs would necessarily be incurred without any design or construction costs.

[6] The Commission included the legislative purpose for the nuclear cost recovery statute in Rule 25-6.0423. The Commission expressly states in the rule that its purpose is to establish alternative cost recovery mechanisms for the recovery of costs incurred in the siting, design, licensing, and construction of nuclear power plants "in order to promote electric utility investment in nuclear ... power plants and allow for the recovery in rates of all such prudently incurred costs." Rule 25-6.0423(1), F.A.C. (emphasis added).

Under OPC's construction, the siting and licensing costs would not be recoverable even if prudently incurred because no design or construction activity costs were incurred. This construction of the statute does not promote utility investment in nuclear power plants and, therefore, must be rejected.

Florida law is well settled that the controlling factor of statutory construction is legislative intent. See, e.g., St. Petersburg Bank & Trust Co. v. Hamm, 414 So. 2d 1071 (Fla. 1982). As such, courts have even read the conjunction "and" to mean the disjunctive "or" when the construction of the term "and" as "either this or that" promotes the legislative intent in enacting a statute. Winemiller v. Feddish, 568 So. 2d 483, 484-85 (Fla. 4th DCA 1990). Construction of the conjunction "and" in Section 366.93 providing for recovery of costs incurred in siting, design, licensing, "and" construction of nuclear power plants as the disjunctive "or" promotes the express legislative intent to promote utility investment in nuclear power plants by providing for cost recovery for "all" costs for nuclear power plant activities.

Indeed, the disjunctive "or" was used by the Florida Legislature when it amended Section 403.519 at the same time it enacted Section 366.93 to include similar language. In Section 403.519(4)(e), the Florida Legislature provided that "the right of a utility to recover any costs incurred prior to commercial operation," including "costs associated with the siting, design, licensing, or construction of the plant," shall not be challenged unless the Commission finds after an evidentiary hearing that certain costs were not prudently incurred. §403.519(4)(e), Fla. Stats. (emphasis added). The Florida Legislature, therefore, clearly intended this same language in Section 366.93 to be read broadly to include cost recovery for prudently incurred costs for any of the identified activities whether or not other identified nuclear power plant activities were taking place at the same time. OPC's apparent construction of the conjunction "and" in this statutory language to deny cost recovery for certain nuclear power plant development activities unless

costs are incurred for all identified activities obviously does not promote the legislative intent of the statute. OPC's construction of Section 366.93, therefore, must be rejected.

Third, OPC's apparent construction of the statute defies common sense. The development of a nuclear power plant naturally follows a progression of activities from siting to construction and operation of the plants. This natural progression of activities is reflected in the identification of the sequence of siting, design, licensing, and construction activities for a nuclear power plant in the statute. This does not mean that costs for all such activities must be incurred at the same time because they will not be incurred at the same time. Costs for siting activities will necessarily be incurred before costs for any construction activities and costs for construction activities will necessarily be incurred after all siting activities have long concluded on any construction project. OPC's apparent construction of the statute to require costs to be incurred for all such activities for the costs of any such activities to be recovered means no costs will be recovered at times as a practical matter and, therefore, this construction defies common sense. For this additional reason, OPC's statutory construction argument must be rejected.

Finally, OPC's apparent construction of the nuclear cost recovery statute is inconsistent with the Commission's consistent application of the nuclear cost recovery statute and rule in the past two nuclear cost recovery clause proceedings. Florida Power & Light Company ("FPL") requested cost recovery under the statute in 2008, 2009, and 2010 for costs incurred for what admittedly are only licensing activities for its Turkey Point Units 6 and 7 nuclear power plants. FPL has no engineering, procurement, or construction contract for these plants and does not intend to enter into such a contract or contracts until some point in the future. The Commission reviewed FPL's request for cost recovery for its licensing activities in each of the past two proceedings and, after finding those costs were prudently or reasonably incurred, allowed FPL to

recover the costs from FPL's customers. This application of the statute and rule is consistent with PEF's construction of the nuclear cost recovery statute and rule.[7]

ISSUE 3A: 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?

PEF Position:

* No. The Commission is governed by the express legislative authority in Section 366.93. Section 366.93 provides the scope of the Commission's authority which is the development of alternative cost recovery mechanisms for the recovery of all costs prudently incurred for a nuclear power plant. The Commission cannot depart from this scope by rule or order to alter the utility's ability to recover prudently incurred costs for a nuclear power plant according to an unspecified "risk sharing" mechanism.*

The Commission has no authority to exercise discretion beyond what has been expressly authorized by the Legislature in Section 366.93 and, thus, the Commission cannot require a "risk sharing" mechanism for costs recoverable under Section 366.93

The Commission's authority is derived solely from the Florida Legislature. The Commission has no discretion to exercise authority beyond what has been expressly authorized by the Legislature by statute. United Telephone Co. of Florida v. Public Service Commission, 496 So. 2d 116, 118 (Fla. 1986); Florida Bridge Co. v. Bevis, 363 So. 2d 799, 802 (Fla. 1978). The Florida Legislature expressly provided that utilities shall recover all prudently incurred costs for nuclear power plants in Section 366.93. The Commission, therefore, has no authority to "require" any mechanism to share "risk" if the result is the utility does not recover a cost that the utility prudently incurred for a nuclear power plant.

The Florida Legislature expressly provides for cost recovery for nuclear power plants in Section 366.93. The Florida Legislature required that the Commission "shall establish, by rule,

[7] Remarkably, OPC is not taking the position that FPL's current activities related to Turkey Point Units 6 and 7 --- which are licensing activities only --- fail to satisfy the statute such that the Commission should deny FPL's request for cost recovery. (See Prehearing Order No. PSC-10-0538-PHO-EI, p. 20). If FPL's current activities related to Turkey Point Units 6 and 7 satisfy the nuclear cost recovery statute then certainly PEF's more substantive activities satisfy the statute and are recoverable if the costs are prudently incurred.

alternative cost recovery mechanisms for the recovery of costs incurred in the siting, design, licensing, and construction of a nuclear power plant." §366.93(2), Fla. Stats. (emphasis added). The Florida Legislature further required the Commission to design the alternative cost recovery mechanisms "to promote utility investment in nuclear ... power plants and allow for the recovery in rates of all prudently incurred costs." Id. (emphasis added). "Costs" were defined by the Florida Legislature to include "all capital investments, including rate of return, any applicable taxes, and all expenses, including operation and maintenance expenses, related to or resulting from" the nuclear power plant development activities. §366.93(1)(a), Fla. Stats. (emphasis added).[8] Further, in the event the utility elects not to complete or is precluded from completing construction of the nuclear power plant, the Florida Legislature provided that the "utility shall be allowed to recover all prudent preconstruction and construction costs incurred." §366.93(6), Fla. Stats. (emphasis added).

If the utility prudently incurs costs for a nuclear power plant the utility is entitled to recover those costs from customers. The Florida Legislature used the word "all" four times to describe the costs or expenses that can be recovered from customers if prudently incurred for nuclear power plant development activities. When the Florida Legislature said "all," they meant "all" prudently incurred costs. There is no requirement in Section 366.93 for the utility to share "risk" or "cost" with customers and there is no "threshold" above which costs prudently incurred are not recovered. All costs means all costs.

The only requirement is that the utility must prudently incur the cost for a nuclear power plant to recover it from customers. The Florida Legislature made this single requirement clear in

[8] Consistent with the express legislative directive, the Commission adopted a rule providing alternative recovery mechanisms for nuclear power plant costs in Rule 25-6.0423, F.A.C. The Commission rule includes the legislative purpose to promote utility investment in nuclear power plants and provides for the recovery of all prudently incurred costs. Rule 25-6.0423, F.A.C.; see also Vantage Healthcare Corp. vs. Agency for Healthcare Admin., 687 So. 2d 306, 308 (Fla. 1st DCA 1997) ("agency is obligated to follow its own rules").

Section 403.519. There, the Florida Legislature explained that "the right of a utility to recover any costs incurred prior to commercial operation" of a nuclear power plant "shall not be subject to challenge unless and only to the extent the commission finds, based on a preponderance of the evidence adduced at a hearing before the commission under s. 120.57, that certain costs were imprudently incurred." §403.519(4)(e), Fla. Stat. The utility, therefore, has the right to recover prudently incurred costs. The Commission must further hear evidence on the prudence of costs and can only deny cost recovery if the preponderance of the evidence shows that certain costs were not prudently incurred.

The Commission, therefore, has no authority to set aside costs above a threshold or for some undefined sharing mechanism between the utility and the customers. The Commission must conduct a hearing regarding the prudence of all costs for nuclear power plant development activities and can disallow only specific, "certain" costs that are found to be imprudent based on the evidence. If the evidence demonstrates the cost is prudently incurred for a nuclear power plant, the Commission must allow the utility to recover that cost from customers.

OPC and other intervenors mislead the Commission with respect to its statutory authority in arguing for various "mechanisms" or other forms of relief that are inconsistent with the Commission's express authority under Section 366.93 and the regulatory compact under Chapter 366.[9] In sum, they all argue the Commission has the authority to disallow prudently incurred

[9] Intervenors' arguments and recommendations vary widely from what they asserted in their prehearing statements on this issue and what they requested in their oral arguments at the hearing. In their prehearing statements, OPC and PCS Phosphate argue for some vague "risk sharing mechanism" to keep costs from escalating to some undefined level that they apparently deem to be "unfair." (See Prehearing Order No. PSC-10-0538-PHO-EI, p. 24). SACE argues the utility should be responsible for costs above some undefined threshold. (Id.). In their opening statements, however, OPC argues PEF should share "equally" in some undefined costs while OPC's expert recommended that the Commission consider placing "some" undefined future costs at risk of disallowance if the project is cancelled in the future. (T. 27, 714). PCS Phosphates argued the Commission should not approve cost recovery for anything but licensing costs until PEF obtained at least 50 percent joint ownership in the project. (T. 35). FIPUG joined in these recommendations and further recommended an undefined "risk sharing mechanism" and that the Commission defer cost recovery until they "have a handle on" whether the project is built. (T. 40). None of

costs by relying on what they call the "purpose and intent" of Chapter 366 or by ambiguous references to "fixing fair, just, and reasonable rates." Simply put, no matter how they characterize it, OPC and the intervenors are asking the Commission to do something that the Florida Legislature gave it no power or authority to do and that violates the express power or authority the Commission is required to exercise in Sections 366.93 and 403.519(4)(e).

First, the Florida Legislature made clear that the "purpose and intent" of Section 366.93 was to "promote utility investment" in nuclear power plants by allowing for the recovery in rates of all prudently incurred costs. §366.93(2), Fla. Stat. The Commission cannot ensure that the express purpose and intent of Section 366.93 to promote utility investment in nuclear power plants is met by adopting any mechanism or recommendation that means the utility does not recover prudently incurred costs for nuclear power plants. What OPC and intervenors propose is a violation of the purpose and intent of Section 366.93, and turns the concept of regulatory ratemaking on its head.

Second, the Florida Legislature chose to speak directly to the recovery of costs for nuclear power plants in Sections 366.93 and 403.519(4)(e). These express legislative directions to the Commission with respect to the recovery of costs for nuclear power plants are, therefore, controlling. The Commission cannot look to non-applicable statutes covering the recovery of costs in rates in general terms as the intervenors suggest when there is a specific statute covering the particular costs at issue in rates. See, e.g., School Bd. of Palm Beach Cnty. v. Survivors Charter Schools, Inc., 3 So. 3d 1220, 1233 (Fla. 2009) (Court rejected argument based on Florida APA when express statute dealing with charter school terminations existed because "we are mindful of the principle that specific statutes covering a particular subject area will control over

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these proposals are meaningfully defined and all of them require the Commission to violate the express statutory directives in Sections 366.93 and 403.519(4)(3), Florida Statutes.

a statute covering the same subject in general terms"). The Commission certainly cannot look to general statutory provisions for the purpose of avoiding, limiting, or modifying the express legislative directives in Sections 366.93 and 403.519(4)(e). See, e.g., Donato v. AT&T Co., 767 So. 2d 1146, 1150-51 (Fla. 2000) (courts are "precluded from construing an unambiguous statute in a way which would extend, modify, or limit its express terms or its reasonable and obvious implications. To do so would be an abrogation of legislative power.").

Sections 366.93 and 403.519(4)(e) unambiguously provide for the right of utilities to recover all prudently incurred costs for nuclear power plants from customers. OPC and intervenors make various proposals or recommendations that ultimately require the Commission to modify, limit, or avoid the utility's right to recover these prudently incurred costs. The Commission has no power to adopt such proposals or recommendations. To do so violates the express legislative authority in Sections 366.93 and 403.519(4)(e).

Third, OPC and intervenors mislead this Commission with respect to the nature of the regulatory compact that exists under Chapter 366. They suggest that the nuclear cost recovery statute and rule somehow changed the regulatory compact under Chapter 366 such that customers "bear all the risk" and utilities have no "skin in the game" with respect to the costs for new nuclear generation. (E.g., T. 38-40, 967-68, 1161, 1170-71). Intervenors are wrong.

Utilities always bear the risk of costs incurred to provide service to customers, whether it is under Section 366.93 or other provisions of Chapter 366, because utilities must demonstrate the costs are reasonably and prudently incurred before they are passed on to customers. That is the nature of public utility regulation and the regulatory compact. (T. 957-58, 966-69, 1161-62, 1170-71, 1174-76). Investor-owned utilities in the State of Florida are regulated monopolies, and as such are mandated to serve all customers within their respective service territories. In exchange, if costs are reasonably and prudently incurred to provide electric service to customers,

utilities are entitled to recover those costs and a reasonable return on the costs of the utilities' invested capital -- rates and returns are set by the regulator, not the utilities, and they cannot be changed without regulatory approval. See United Gas Pipe Line Co. v. Bevis, 336 So. 2d 560, 564 (Fla. 1976); City of Mount Dora v. JJ's Mobile Homes, Inc., 579 So. 2d 219, 225 (Fla. 5th DCA 1991). Section 366.93 changes the timing for recovery of some of the prudently incurred costs compared to the timing of cost recovery under other Chapter 366 provisions, but it makes clear that those costs are recoverable only if prudently incurred. §366.93(2), Fla. Stats.[10] The risk of cost recovery, therefore, is born by the utility, not the customer. PEF, therefore, does have "skin in the game" because PEF must demonstrate each year that its costs for the LNP are prudently incurred before PEF can recover them from customers. (T. 966-69, 1161-62, 1170-71, 1174-76). Section 366.93 makes nuclear plants cheaper for customers and levels out the costs of paying for nuclear plants over time rather than in a lump sum when the plant is completed. It in no way shifts any risk to customers.

Finally, intervenors argue for so-called "risk sharing" mechanisms but they do not define them. As a result, PEF does not have fair notice of what is being proposed and an adequate opportunity to respond. Fundamental due process requires that PEF be provided notice and an opportunity to be heard at a meaningful time and in a meaningful manner. Fuentes v. Shevin, 407 U.S. 67, 80 (1972). See also Florida Gas Co. v. Hawkins, 372 So. 2d 1118, 1121 (Fla. 1979) (finding the "rudiments of fair play and due process require that the Company must be afforded a

[10] Section 366.93(6) does provide for the recovery of prudent costs incurred for nuclear power plants even if the utility elects not to complete them or is precluded from completing them. §366.93(6), Fla. Stats. But well before section 366.93 was created the courts and the Commission had already recognized that utilities can recover project cancellation costs under the then-existing Chapter 366 if the decision to cancel was prudent and the costs were prudently incurred. See Gulf Power Co. v. Cresse, 410 So. 2d 492, 493 (Fla. 1982); Order No. 10557, Docket No. 810136-EU(CR), (Feb. 1, 1982); Order No. PSC-09-0013-PAA-EI, Docket No. 070432-EI, (Jan. 5, 2009). The apparent reason this provision was included in Section 366.93, Florida Statutes, was to specify the exact period over which such costs are recoverable from customers if they are prudently incurred. §366.93(6), Fla. Stats. ("The utility shall recover such costs through the capacity cost recovery clause over a period equal to the period during which the costs were incurred or 5 years, whichever is greater.").

fair hearing and an opportunity to explain or rebut" any factual matters affecting the fairness of utility rates). OPC admits as much in its prehearing statement, noting that interested parties should receive notice and an opportunity to respond to any attempt to develop a "risk sharing" mechanism. Prehearing Order No. PSC-10-0538-PHO-EI, p. 24. Accordingly, the Commission and the parties are in no position now to consider any such mechanisms for adoption as a matter of fundamental due process.

B. FACTUAL ISSUES

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?

PEF Position:

Yes, PEF's accounting and costs oversight controls were reasonable and prudent for the CR3 Uprate project and the LNP. The Company has appropriate, reasonable project accounting controls, project monitoring procedures, disbursement services controls, and regulatory accounting controls. Pursuant to these controls, PEF regularly conducts analyses and reconciliations to ensure that proper cost allocations and contract payments have been made.

PEF's 2009 Accounting and Costs Oversight Controls for the LNP and CR3 Uprate are Prudent.

The undisputed evidence demonstrates that PEF's 2009 accounting and costs oversight controls for the LNP and for the CR3 Uprate are reasonable and prudent.[11] PEF's witness Mr. Will Garrett conclusively demonstrates the prudence of the controls that were confirmed by internal and Commission Staff audits. (T. 55-56, 65-70, 77; Ex. #62, #63). OPC witness Dr. William Jacobs had an accountant review the Company's filings and he had no opinion that PEF's 2009 accounting and costs oversight controls for the LNP and for the CR3 Uprate are unreasonable or imprudent. (T. 731-32). No intervenor presented any other evidence regarding

[11] In its position statement for Issue 4, OPC states that for the CR3 Uprate "there are indications of inadequate management and contracting oversight controls." See Prehearing Order No. PSc-10-0538-PHO-EI. However, no evidence was introduced at the hearing regarding this statement and what OPC clearly meant by its position at the hearing was that OPC was concerned with certain CR3 Uprate costs not the accounting and cost oversight controls. (T. 371-471).

PEF's 2009 accounting and cost oversight controls.[12] Consequently, the evidence of record demonstrates that PEF's 2009 accounting and cost oversight controls for both projects are reasonable and prudent.

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?**

PEF Position:

Yes, PEF's project management, contracting, and oversight controls for 2009 were reasonable and prudent for the CR3 Uprate project and the LNP. These procedures are designed to ensure timely and cost-effective completion of the project. They include regular status meetings, both internally and with its vendors. These project management and oversight controls also include regular risk assessment, evaluation, and management. There are also adequate, reasonable policies regarding contracting procedures.

PEF's 2009 Project Management, Contracting, and Oversight Controls for the LNP and for the CR3 Uprate Project are Prudent.

The evidence demonstrates that PEF's 2009 project management, contracting, and oversight controls for the LNP and for the CR3 Uprate are reasonable and prudent. PEF's witnesses, Mr. Franke for the CR3 Uprate and Ms. Hardison, Mr. Karp, and Mr. Elnitsky for the LNP, presented undisputed evidence that PEF's project management, contracting, and oversight controls for both projects were reasonable and prudent. (T. 328-36, 360-62, 544-56, 570-72, 610-15, 889). This evidence was further supported by favorable internal and Commission Staff audits, and a favorable independent audit conducted by Mr. Gary Doughty, a nuclear project management consultant with extensive project management and prudence review experience.

[12] In re-direct OPC counsel asked Dr. Jacobs to agree that his lack of an opinion regarding the imprudence of PEF's LNP and CR3 Uprate controls did not mean he was affirmatively stating that the controls were prudent. (T. 740-41). OPC elicited a similar response regarding his lack of an opinion regarding the imprudence of PEF's project management, contracting and oversight controls for the LNP and the CR3 Uprate. (Id.). This is a distinction without a difference, however, because if Dr. Jacobs believed the LNP or CR3 Uprate 2009 accounting and cost oversight controls, or the project management, contracting and oversight controls, were unreasonable or imprudent he undoubtedly would have expressed that opinion. The fact that he did not confirms PEF's undisputed evidence that the accounting and project management processes and controls are reasonable and prudent.

(T. 179-227, 749; Ex. #77). Mr. Doughty reviewed the LNP project management, contracting and oversight controls for 2009 and testified that they were reasonable and prudent. (T. 179, 185-89, 226-28). No one challenged this testimony. Moreover, OPC witness Dr. Jacobs agreed that he expressed no opinion this year regarding the prudence of the Company's LNP project management, contracting, and oversight controls because he reviewed them last year and did not see any significant concerns with them. (T. 730-31). He also expressed no opinion that PEF's 2009 project management, contracting, and oversight controls for the CR3 Uprate were unreasonable or imprudent. (T. 702-23). Consequently, the undisputed record evidence demonstrates that PEF's 2009 project management, contracting and oversight controls for the LNP and the CR3 Uprate are reasonable and prudent.

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?

PEF Position:

Yes, the Commission should approve what PEF submitted because PEF's detailed feasibility analyses demonstrate the long-term feasibility of completing the LNP. If the Commission does not approve PEF's submission based on perceived technical deficiencies, it should identify the deficiencies and permit PEF to re-file with additional information. If the Commission finds the LNP is not feasible on substantive grounds, this would preclude PEF from completing the LNP and the Commission should award PEF its prudent 2009, reasonable 2010, and reasonable project exit costs.

The Record Evidence Demonstrates that the LNP is Feasible.

PEF submitted a detailed analysis setting forth the long-term feasibility of completing the LNP, consistent with the requirements of Rule 25-6.0423 and the feasibility analysis this Commission approved last year. (T. 1070-82; Ex. #27). The analysis demonstrates that the LNP is feasible. (T. 921). First, the Company employed a qualitative analysis of the technical and regulatory capability of completing the plants. This analysis demonstrates that the LNP is

feasible from a regulatory and technical perspective. (T. 1070-78). The Company also qualitatively analyzed the risks, the costs and the benefits of completing the Levy nuclear power plants and determined completion of the plants was feasible. (T. 1078-97). Next, the Company performed an updated Cumulative Present Value System Revenue Requirements ("CPVRR") economic analysis in the exact same manner as the Commission approved last year. (Ex. #27). The updated CPVRR indicates that the LNP is economically viable and has the potential to provide PEF and its customers with substantial fuel and environmental cost savings over the life of the project. (T. 1078-82). The CPVRR, exhibit JL-3 to Mr. Lyash's April 30, 2010 testimony and admitted as hearing exhibit #27, is included in the chart below.

PEF Summary CPVRR Review for 2010 NCRC Filing

April'10 NCRC CPVRR Economic Results Summary Table [$2010]

Fuel Sensitivities						***CapEx Sensitivities***						
Base Capital Reference Case	Low Fuel Reference	Low BW Fuel Sens	**Mid Fuel Reference**	High BW Fuel Sens	High Fuel Reference	***Mid Fuel Reference Case***	LNP CapEx (15%)	LNP CapEx (5%)	**Mid Fuel Reference**	LNP CapEx +5%	LNP CapEx +15%	LNP CapEx +25%
NCRC APR'10: 100% Ownership, 2021 COD Levy Case Versus All Gas CPVRR $Million, 6.75% Discount Rate												
No CO_2	($11,170)	($3,545)	$975	$5,069	$19,776	*No CO_2*	$2,520	$1,490	$975	$460	($570)	($1,600)
EPA WM CO_2	($7,437)	$865	$4,792	$8,908	$23,614	*EPA WM CO_2*	$6,337	$5,307	$4,792	$4,277	$3,247	$2,218
CRA WM CO_2	($5,145)	$3,309	$7,201	$11,330	$26,001	*CRA WM CO_2*	$8,746	$7,716	$7,201	$6,686	$5,656	$4,626
EPRI Full CO_2	($2,843)	$5,796	$9,669	$13,817	$28,450	*EPRI Full CO_2*	$11,214	$10,184	$9,669	$9,154	$8,124	$7,094
EPRI Ltd CO_2	$2,110	$10,935	$14,748	$18,867	$33,531	*EPRI Ltd CO_2*	$16,293	$15,263	$14,748	$14,234	$13,204	$12,174
NCRC APR'10: 80% Ownership, 2021 COD Levy Case Versus All Gas CPVRR $Million, 6.75% Discount Rate												
No CO_2	($9,166)	($2,878)	$628	$3,906	$15,780	*No CO_2*	$1,842	$1,033	$628	$224	($586)	($1,395)
EPA WM CO_2	($6,217)	$511	$3,601	$6,884	$18,782	*EPA WM CO_2*	$4,815	$4,006	$3,601	$3,196	$2,387	$1,578
CRA WM CO_2	($4,407)	$2,393	$5,466	$8,776	$20,647	*CRA WM CO_2*	$6,680	$5,871	$5,466	$5,062	$4,252	$3,443
EPRI Full CO_2	($2,574)	$4,328	$7,398	$10,735	$22,564	*EPRI Full CO_2*	$8,612	$7,803	$7,398	$6,993	$6,184	$5,374
EPRI Ltd CO_2	$1,343	$8,339	$11,376	$14,698	$26,484	*EPRI Ltd CO_2*	$12,590	$11,781	$11,376	$10,972	$10,162	$9,353
NCRC APR'10: 50% Ownership, 2021 COD Levy Case Versus All Gas CPVRR $Million, 6.75% Discount Rate												
No CO_2	($6,496)	($2,461)	($213)	$1,880	$9,494	*No CO_2*	$557	$44	($213)	($469)	($982)	($1,495)
EPA WM CO_2	($4,601)	($371)	$1,633	$3,738	$11,354	*EPA WM CO_2*	$2,402	$1,889	$1,633	$1,376	$863	$350
CRA WM CO_2	($3,441)	$813	$2,801	$4,900	$12,510	*CRA WM CO_2*	$3,571	$3,058	$2,801	$2,544	$2,031	$1,518
EPRI Full CO_2	($2,260)	$2,080	$4,036	$6,160	$13,693	*EPRI Full CO_2*	$4,805	$4,292	$4,036	$3,779	$3,266	$2,753
EPRI Ltd CO_2	$235	$4,678	$6,605	$8,709	$16,129	*EPRI Ltd CO_2*	$7,375	$6,862	$6,605	$6,349	$5,836	$5,323

This analysis demonstrates that 20 of 25 cases are positive at a 100% ownership level; 20 of 25 cases are positive at 80%; and 18 of 25 cases are positive at 50%. Even for the CapEx sensitivities 23 of 25 cases are positive at a 100% ownership level; 23 of 25 are positive at 80%;

and 21 of 25 are positive at 50%.[13] The CPVRR demonstrates that the LNP is economically feasible. (T. 1078-82, 1129-46; Ex. #27).

OPC witness Dr. Jacobs agrees that the feasibility analysis provided this year by PEF was sufficient to demonstrate the feasibility of the Levy nuclear project given the assumptions that are contained in the analysis.[14] (T. 727). Moreover, Dr. Jacobs said that PEF should not cancel the project, or the EPC contract, at this time. (Id.).

SACE witnesses Mr. Arnold Gundersen and Mr. Mark Cooper dispute the feasibility of the LNP by making essentially the same arguments regarding the project's feasibility that were rejected by the Commission last year. (T. 1131-32, 1138). Mr. Gundersen challenges the regulatory and technical feasibility of the LNP based on his own prejudiced and unsupported views about the AP1000 design and the LNP site. (T. 687-96, 901-06, 1130-31). Simply put, however, the NRC is continuing its review of the AP1000 design towards approval of that design and its review of the LNP COLA towards application of that design to the LNP site. (T. 884, 904-07, 1133-36). Nuclear reactors can be built and operated in Florida, and PEF has built and is operating a nuclear reactor within ten miles of the LNP site. (T. 907, 1105, 1137, 1149). In fact, PEF's Draft Environmental Impact Statement for the LNP site was recently issued. (T. 964, 1148). There is, therefore, no basis to conclude now that the AP1000 design will not be approved and that the design cannot be applied to the Levy site. (T. 883).

Mr. Cooper challenges the economic feasibility of the LNP by simply replacing PEF's forecast assumptions with unproven and unsupported assumptions of his own selection, just as he

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[13] This analysis was run with the LNP total project cost estimate discussed by Mr. Elnitsky (T. 868, 875, 939-40, 1079; Ex. #214), and the range for that estimate is within the plus 25% described in the analysis. (T. 1180-81; Ex. #27).

[14] SACE counsel attempts to discredit Dr. Jacobs' testimony by confirming that Dr. Jacobs presented no opinion on the feasibility of the LNP in his prefiled direct testimony. (T. 737). However, the reason Dr. Jacobs does not include any testimony about the LNP feasibility is because he reviewed PEF's feasibility analysis this year and found it was sufficient to demonstrate the feasibility of the LNP. (T. 727).

did in last year's proceeding. (T. 637-39, 1105, 1131, 1138-40). PEF's forecasts, however, are based on proven forecast methods previously approved by the Commission in the 2009 NCRC docket and other dockets. (T. 1105).

Mr. Cooper and Mr. Gundersen's opinions were not accepted last year and should not be accepted this year. PEF has demonstrated that the LNP is still feasible applying the same methodology this Commission approved last year.

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?

PEF Position:

Yes. This decision was the result of a deliberate, rational, decision-making process consistent with best management practices in the utility industry. PEF reasonably and prudently made its decision based on this assessment of the LNP costs, benefits, and risks. If the Commission determines that PEF's decision is not reasonable and that PEF should cancel the LNP the Company is entitled to recover its prudent 2009, reasonable 2010, and reasonable project exit costs pursuant to Section 366.93(6).

The Evidence Demonstrates that PEF's Decision was Reasonable.

PEF's decision to continue with the LNP including pursuing a COL from the NRC for Levy Units 1 and 2 was reasonable. PEF witnesses Mr. Elnitsky and Mr. Lyash testified in detail to the reasonable decision-making process and the reasons for the Company's decision to continue with the LNP on a slower pace. (T. 866-77, 891-901, 1083-97; Exs. #22 & #30; T. 1106-29, 1143-44). This evidence indisputably demonstrates PEF's decision was a reasonable choice among several reasonable choices for the LNP. (Id.). No one seriously disputed that PEF's decision was not a reasonable one, intervenors only assert that another decision should be made or that conditions should be placed on the decision PEF made. (T. 722, 729, 697, 670-71). PEF's decision is not rendered unreasonable simply because intervenors prefer a different or conditional decision, thus, the evidence conclusively shows that PEF's decision was reasonable.

To summarize this evidence, PEF witnesses Elnitsky and Lyash explained that the Company reasonably evaluated all viable options for the LNP under the circumstances facing the Company in reaching its decision. (T. 862-71, 891-901, 1083-97; Exs. #22 & #30). This evaluation was triggered by the NRC's Limited Work Authorization ("LWA") determination in early 2009 that required a minimum twenty month schedule shift. (T. 847, 1035, 1039).[15] As a result of that NRC determination, the Company had to determine the most reasonable schedule shift under all circumstances facing the Company and the project, if the Company determined to proceed with the project. As Mr. Elnitsky explained, there was only one schedule shift, (T. 849, 986-88), not a series of one delay after another as intervenors erroneously claimed. (T. 987-88). The Company set out to change the schedule once to not only incorporate the LWA determination impact, but also all other impacts of the risks facing the project. (T. 986-87). This is what reasonable and prudent project management requires and what the Company in fact did. (T. 263-64, 268-69, 288-397).

The Company's evaluation of the decision to proceed with the project and, if it elected to do so, on what schedule, included an assessment of the existing and future uncertainty of all risks associated with the LNP. (T. 856-62, 883, 1039-70). As a result of this evaluation, the Company identified viable options including proceeding as quickly as possible with the project on a 36-month schedule shift, a longer term project suspension, and project cancellation. (T. 862-64, 1083-84). As Mr. Elnitsky and Mr. Lyash explained, regulatory determinations beyond the Company's control precluded PEF from proceeding with confidence with the LNP on a minimum LNP schedule shift shorter than 36 months. (T. 860-64, 1039, 1084). No intervener or

[15] After hearing the evidence regarding the NRC's LWA determination in the 2009 nuclear cost recovery docket, the Commission concluded that PEF management acted appropriately in developing a Levy project construction schedule that included an LWA. Order No. PSC-09-0783-FOF-EI, Docket No. 090009-EI, p. 25, (November 19, 2009). The Commission further found that it was persuaded that PEF's actions and planning regarding an LWA leading up to the signing of an EPC contract were reasonable and consistent with good business practices. (Id. at p. 30).

staff witness disputes the impacts of these regulatory determinations on PEF's license review schedule. (T. 640, 679, 710-11, 751, 1208-09).

By the fall of 2009, however, even a 36-month schedule shift in the project was considered optimistic and aggressive. (T. 856, 1084, 1106). The Company reasonably determined that a longer schedule shift beyond 36 months was necessary to continue work on the project and ensure that there was sufficient float built back into the LNP schedule. (T. 860-64, 1084-86, 1106-07). Continuation of the project on a longer term schedule by focusing on the regulatory permits for the LNP and other work to meet that schedule accounted for existing and potential future schedule impacts as well as the impacts of enterprise risk events on the project, including the economy, and federal and state energy and environmental policy, among other enterprise risks facing the project. (T. 1106-07). A longer-term schedule shift also deferred substantial capital investment in the LNP until those permits were obtained. This decision mitigated the capital investment exposed to the increased enterprise risks for the benefit of the Company and its customers. (T. 1088-92, 1146-47).

There was in fact, on an aggregate basis, greater uncertainty and thus risk associated with proceeding with the project than existed at the time of the need determination. (T. 1109, 1112). As a result of these uncertainties and risks, the Company also considered project cancellation a viable option to continuation of the project on a project schedule longer than a 36-month schedule shift. (T. 1107, 1109, 1186-88). Project cancellation was in fact the Company's "default" position. (T. 1109). The decision to proceed with the LNP on a slower pace depended on negotiating an amendment to the EPC agreement with the Consortium to extend the partial suspension on favorable terms. (T. 1103, 1111). PEF would have cancelled the project if PEF was unable to negotiate a favorable amendment to the EPC contract to continue the project on a slower pace. (T. 1111-12).

PEF achieved its objectives in Amendment 3 to the EPC agreement. PEF was able to negotiate a favorable EPC amendment to implement the option of continuing the project on a slower pace while maintaining the favorable terms and conditions of the existing EPC agreement. (T. 873; Ex. #22; Ex. #218, pp. 65, 84, 87). The beneficial terms of Amendment 3 to the EPC agreement are explained in detail in the confidential Elnitsky, Lyash and Galloway testimony (see T. 872-74, 899, 1087, 1103, 1111-14), and in the confidential staff audit report on the project at exhibit #77, pages 17, 39-44, in evidence, which are not disputed by any of the parties.

In sum, PEF [redacted] allow PEF to [redacted] During this licensing period, PEF and its customers [redacted] PEF, therefore, was able to obtain the [redacted] in Amendment 3 while placing the Company and its customers [redacted] No intervenor witness disputed the favorable terms of Amendment 3 to the EPC agreement.[16]

Audit staff, in fact, agreed that PEF was able to preserve the existing contractual benefits of the EPC agreement in Amendment 3. Audit staff notes that Amendment 3 to the EPC agreement (a) [redacted]

[16] PCS Phosphate counsel did question the ability of the favorable amendment terms to reduce the likelihood of a particular enterprise risk occurring. As Mr. Elnitsky explained, the amendment did not lessen the chances of enterprise risks occurring, (T. 952-53), but no contractual provision can accomplish that result. Enterprise risks, like the status of the economy and its impact on the Company and customers, are by their very nature beyond the control of PEF by contract or otherwise. (T. 951-53, 1039). Rather, as Mr. Elnitsky explained, the amendment to the EPC agreement mitigated the impact of the enterprise risk occurring such that the Company and customers were better protected from the enterprise risk impacts in the event one or more enterprise risk did occur. (T. 952).

[redacted] (b) maintains [redacted] (c) maintains [redacted] (d) [redacted] and (e) maintains the [redacted] (Ex. #77, p. 17). Audit Staff concluded that the Company was able to negotiate a favorable amendment with limited fee impact. (Id.). Audit staff also agreed that PEF had successfully mitigated the enterprise risks under Amendment 3 to the EPC agreement. Audit staff concluded that Amendment 3 [redacted] (Id.).

Because PEF sufficiently mitigated the uncertainties and risks associated with the project PEF reasonably determined that it was in the best interests of the Company and its customers to proceed with the project. PEF, therefore, decided that cancellation of the project at this time was not in the best interests of PEF and its customers. (T. 1086-88, 1111-12). PEF's decision continues the project with the work necessary to obtain all LNP permits, including the COL, and meet the new project schedule, while preserving the benefits under the existing EPC agreement. (T. 868-69, 899, 1086-87). The evidence demonstrates that PEF's decision to continue with the project including pursuing a COL from the NRC for Levy units 1 and 2 was reasonable.

Intervenors cannot seriously contend that PEF's decision-making process and ultimate decision was unreasonable.[17] OPC witness Dr. Jacobs in fact admitted that he reviewed PEF's strategic intent and objectives in developing the going forward path for the LNP and found

[17] SACE witnesses disagreed with the Company's decision to continue with the project because they concluded the LNP is not feasible. (T. 670-71; 697-98). In other words, they did not claim the Company's decision-making process was unreasonable, they only claimed they would have reached a different decision as a result of that process because they continue to find the project infeasible.

PEF's actions reasonable. (T. 728-29). He further testified that he reviewed the LNP decision and did not find that PEF was imprudent or unreasonable in evaluating the options PEF evaluated. (T. 729). Although Dr. Jacobs claims PEF should have considered an additional cancellation option he does not claim that the perceived failure to evaluate this option affected PEF's decision.[18] Dr. Jacobs agreed PEF should not cancel the project. (T. 727).

Intervenors further established with the staff witnesses that, in their opinion after conducting an audit of the LNP project management processes and decisions, PEF's decision-making process was reasonable. (T. 776-78, 780-81). However, some intervenors questioned whether PEF's decision to continue with the project was reasonable if utility managers who work for potential joint owners have not yet decided to invest in the LNP. (T. 1164, 1169, 1171-73). They apparently rely on PEF's testimony that reasonable utility managers may reasonably decide on project continuation or cancellation depending on their assessment of the enterprise risks, project costs and project benefits to argue that the apparent decision by potential joint owners not to invest in the LNP at this time means that the Company's decision to continue with the project was unreasonable. (Id.; T. 1187-88). The lack of joint ownership in the LNP at this time, however, does not mean that PEF's decision was unreasonable.

[18] It is difficult to follow the logic of Dr. Jacobs' argument that the Company should have evaluated the likelihood of project cancellation after the COL is obtained given the current risks facing the project at the time PEF made its decision to continue with the project on a slower pace. Dr. Jacobs made clear in his summary at the hearing that his argument was based on his assessment at this time that the "overall enterprise risks that the Company has evaluated are [not] declining" and "there is no sign of joint owners flocking to join the project." (T. 725). As Mr. Elnitsky and Mr. Lyash both pointed out, if the Company thought the current risks justified cancellation at that future date -- as Dr. Jacobs apparently does -- the Company would have cancelled the project now. (T. 892-93, 1107-22). Further, Company management was in fact aware of and discussed the costs of the scenario that Dr. Jacobs claims should have been evaluated when the Company evaluated cancellation or continuation and made its decision. (T. 930-31). The Company knew what the estimated costs were to continue with the project until the COL was obtained and what the estimated costs would be for cancellation at that point. (Id.; T. 1117-118). All of these costs, therefore, were necessarily included in the Company's evaluation of the options to continue with the project on a slower pace or cancel the project. (Id.; T. 892-97). For all the reasons provided in the testimony of Mr. Elnitsky and Mr. Lyash, based on the risks, costs, and benefits of the project, the Company decided not to cancel the project and to continue with the project on a slower pace. (T. 897-901, 1107-15). Again, Dr. Jacobs agreed that the Company should not cancel the project. (T. 727).

Simply put, PEF's testimony that different utility managers may reasonably decide on project cancellation or continuation depending on their assessment of the risks, costs, and benefits of the project means utility managers in the same position as PEF management. (T. 1187-88). As Mr. Lyash explained, utility managers for potential joint owners are not in the same position as PEF because they do not have to make the decision to continue with the LNP or cancel the project. (T. 1152-53, 1169). As Mr. Lyash further pointed out, utility managers for potential joint owners only have to decide whether to invest in PEF's project and they do not have to make that decision now. (T. 1169, 1171). Instead, as the project continues the opportunities for potential joint owners to invest in the LNP continues, and potential joint owners will make the decision to invest in the project on their schedule given their own unique circumstances. (T. 1152, 1164, 1169). PEF cannot force potential joint owners to participate or to participate at any particular time in the project. (T. 1152-53, 1190). The lack of joint ownership in the project at this time, therefore, does not mean that PEF's decision to continue with the LNP was unreasonable. In fact, as Mr. Lyash testified, the LNP is a viable project for PEF and its customers without joint owners. (T. 1150-51).

The lack of joint ownership in the LNP at this time also does not mean there will be no joint owners in the project. As Mr. Lyash explained, PEF expects there will be joint owners in the project, but PEF cannot state with certainty when there will be joint owners in the project. (T. 1151-53, 1190). What PEF can state and what is undisputed is that there continues to be joint ownership interest in the LNP. (Id.; T. 1169).

For all these reasons, PEF's decision to continue pursuing a COL from the NRC for Levy Units 1 and 2 was reasonable. Intervenors' real argument, in fact, is not that PEF's decision to continue with the LNP was unreasonable because they apparently would not disagree with PEF's

decision if PEF paid for the costs to continue the project.[19] These intervenors made clear they find PEF's decision to continue with the project unreasonable because customers have to pay the costs to continue the project under the nuclear cost recovery statute and rule. (E.g., T. 26-7, 45-6, 636, 646, 968, 1120). They complain about the delay in the in-service dates for the Levy nuclear units and the total project costs and resulting rate impacts before the units commence operation that necessarily result from the decision to continue the project on a slower pace. (E.g., T. 103, 107, 115, 142, 146, 164-5). For this reason, they variously urge the Commission to require PEF to share the costs of proceeding with the project if PEF later cancels the project, defer some cost recovery, or place conditions such as joint ownership on the decision to proceed. (T. 25-7, 35, 40, 48-9, 714).[20] These intervenors arguments are not consistent with the law; are not in the best interests of PEF's customers and the State; and if adopted, they will end the development of new nuclear generation in Florida that the Florida Legislature sought to promote with the nuclear cost recovery statute.

Intervenors' arguments necessarily look at the LNP as if it was a short-term, low-dollar project. They argue that while PEF intends to build the units now at this total project cost estimate and on the scheduled in-service dates for 2021 and 2022, PEF cannot state with certainty today that the plants will be built or that there will be no further project delays or cost increases. (T. 26-7, 670, 712, 970, 978-79). They argue that, if the project is later cancelled, the long-term benefits that would be achieved from continuing with the project will be lost. (T. 166-67, 979). As PEF's witnesses explained, the long-term benefits of nuclear generation will be lost

[19] Again, SACE stands apart from the other intervenors because SACE continues to assert through its witnesses that the LNP is not feasible for essentially the same reasons that the Commission rejected when it approved the Company's feasibility analysis for the LNP last year. (T. 670-71, 697-98).

[20] None of these proposals is appropriate for the Commission to consider under the nuclear cost recovery statute and rule. The statue and rule are clear that if PEF demonstrates that its actual costs were prudently incurred and that its estimated and projected costs are reasonable – which is the case in this proceeding – PEF is entitled to recover its costs from customers. (See pages 9-15 above).

if the project is cancelled, and there may be future schedule delays and project cost increases although PEF has no reason today to believe they will occur. (T. 1033-36, 1095, 1116). But these risks are not new, they have always existed and will always exist for any long-term generation project, including the LNP. If PEF waited for certainty with respect to these cost and schedule risks for the LNP PEF would never build the nuclear units or any other unit for that matter. The fact that further schedule delays and cost increases may occur, or that there may be some unforeseeable reason to cancel the project in the future, cannot be the reason continuing with the project now is unreasonable because any long-term generation project would be unreasonable for those reasons.

The total project cost for the LNP has increased primarily because of the decision to continue with the project on a slower pace. (T. 977, 1001).[21] The scope of work and, therefore, the cost for the base scope of work for the LNP, however, have not fundamentally changed since the Company executed the EPC agreement in 2008. (T. 1006). The reason for the increase in the total project cost is primarily the escalation of costs over time with the change in the estimated in-service dates for the units from 2016 and 2017 to 2021 and 2022. (T. 1006, 1201-02; Ex. #218, pp. 206-08).[22] This is, therefore, not a project that is out-of-control as some of the intervenors have suggested. (T. 977, 1001).[23]

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[21] Intervenors frequently referred to the $5 billion increase in the total project costs for the LNP since the need determination in 2008. (E.g., T. 976-77, 1001). This is an improper comparison. Two years ago the total project costs, including AFUDC, were approximately $17.2 billion, but that was for units scheduled for operation in 2016 and 2017. (T. 1201-02; Ex. #218, pp. 206-08). The total LNP project costs have increased by about $5 billion, including AFUDC, for nuclear units in 2021 and 2022. (Id.). The reason for the increase in the total project cost from the need determination proceeding to this proceeding is the change in the scheduled in-service dates of the units. (Id.). The 2008 and 2010 total project cost estimates, therefore, are not directly comparable.

[22] PEF established the reasonableness of its total project cost estimate through the testimony of Mr. Elnitsky. Mr. Elnitsky explained that the total project cost estimate was developed from the EPC agreement terms and conditions, and the Company's knowledge of additional information from the Consortium regarding the costs of the project, in a bottoms up, line-item-by-line-item project cost estimate that required about a thousand hours to develop. (T. 939; Ex. #218, pp. 59-61, 260; Ex. #214). Mr. Elnitsky explained this total project cost estimate was a Class 5/Class 4 estimate under the AACE International cost estimate classification guidelines because the estimated in-service dates are in 2021 and 2022. (Ex. #218, pp. 112, 260). This classification does not mean the LNP total project cost

PEF agrees that nuclear power plants are expensive to build, the LNP is no exception, so it will have more expensive upfront costs for PEF's customers than other generating alternatives. (T. 1210-11). But the total project cost to customers must be placed in the context of the total project benefits because those benefits are the reasons to build nuclear power plants like the LNP in the first place. (T. 1180-81, 1187, 1210-11).

The LNP is a long-term project that will take ten years to develop and build and operate for sixty or more years after it commences operation. (T. 1034-35, 1208-10). The only reasonable way to assess the rate impacts, costs, and benefits of the LNP is over the long-term development and operation of the Levy nuclear units. (T. 1034-35, 1187-88, 1210-11). Indeed, if the intervenors' views were adopted by the Commission, no long-term generation project will ever be built in Florida. When these long-term benefits are considered it is clear that PEF's decision was the right decision for PEF, its customers, and the State of Florida.

The decision to proceed with the project on a slower schedule preserves the long-term benefits of nuclear generation for the Company, its customers, and the State of Florida. (T.

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estimate is inaccurate or unreliable. In fact, as Mr. Elnitsky explained, the total project cost estimate is highly accurate and reliable given the information and knowledge underlying the estimate and the fact that the estimate accounts for all project risks and contingencies within its estimated ranges for the line item costs. (T. 941; Ex. #218, pp. 65-7, 96-100). The accumulation of the estimated line item ranges in the total project cost estimate range is also within the plus and minus range for the total project costs in the Company's feasibility analysis, which demonstrates that the LNP is economically feasible. (T. 1180-81). The Class 5/Class 4 total project cost estimate for the LNP reflects the most accurate and reliable estimate for the LNP with in-service dates of 2021 and 2022 for the Levy nuclear units. (T. 941; Ex. #218, pp. 65-7, 96-100).

[23] SACE also disingenuously suggested that PEF had not disclosed the nature of the schedule shift and the preliminary cost information from the Consortium in August 2009 in the September hearings in the nuclear cost proceeding last year. (T. 988, 990-93). To the contrary, as Mr. Elnitsky and Mr. Lyash countered, the Company repeatedly indicated in testimony that there was a "minimum" 20-month schedule shift due to the LWA determination and that it was evaluating the appropriate schedule shift for the project, including options of 24 or 36 months. (T. 987-88, 993, Docket No. 09009-EI, T. 1204). Significantly, SACE failed to bring to the attention of the Commission, the Company's witness, Garry Miller, who testified in the 2009 docket that the Company had obtained the cost information for these schedule shifts from the Consortium, that the Company was in the process of evaluating it, and that the indications were that there would be cost increases within the additional project cost range in the Company's feasibility analysis. (Docket No. 09009-EI, E.g., T. 1204-05, 1392, 1399, 1412-16, 1426, 1433-34). The Company disclosed the likely longer schedule shift and cost increases during the proceeding last year although the actual schedule shift and total project cost were not known at the time because the Company had not completed its evaluation process and made a decision. (Id.).

1088, 1100-01, 1113; Ex. #218, p. 87). These long-term benefits include estimated $100 billion in fuel savings to customers over the 40 plus years of operation of the LNP. (T. 1210). These long-term benefits also include fuel portfolio diversity, reduced reliance on fossil fuels for energy production, carbon free energy generation, and base load capacity with a relatively low cost fuel source. (T. 1088, 1113). The LNP will provide PEF with fuel portfolio diversity, reduce PEF's reliance on fossil fuels for energy production, and provide essentially carbon-free energy production, regardless of the impact of global warming concerns and attendant legislation or regulation of carbon emissions in the future. (T. 1088, 1113-14). The LNP will further provide PEF with unparalleled base load capacity with the lowest cost fuel source available to the Company. (Id.).

These are the same benefits that: (1) the Florida Legislature recognized in the 2006 legislation revising the need determination requirements for nuclear power plants and establishing alternative cost recovery mechanisms to encourage utility investment in nuclear generation in Florida, (T. 1088, 1095, 1114); and (2) the Commission recognized in granting the need determination for the LNP. (Id.). These same benefits exist today and they are worth the costs of proceeding with the project on a slower pace. (T. 1088, 1113-14).

Project cancellation, on the other hand, effectively ends the development of new nuclear generation in Florida and precludes PEF's customers and the State from receiving the long-term benefits of base load nuclear generation for the foreseeable future. (T. 1086, 1114-15). Termination of the EPC agreement and cancellation of the project will certainly stop the LNP. It will also likely end the development of new nuclear generation for the Company for the foreseeable horizon. (T. 1086, 1115). The Consortium will invest its resources in those utilities actively pursuing development of the AP1000 in the United States and around the world. (Id.). Southern Company is proceeding with the construction of two AP1000 plants at its Vogtle site in

Georgia and six AP1000 plants are being designed or constructed in China alone. (T. 1072, 1114-15). If PEF terminated the EPC agreement and cancelled the project, and later wanted to initiate another nuclear project at the Levy site with the Consortium or with another vendor, PEF will fall behind all other utilities with active nuclear projects in obtaining a commitment of resources from vendors and suppliers. (T. 1086-87).

Likewise, the NRC's limited resources will be committed to review of COLAs or the engineering and construction of active nuclear projects. There are currently 13 COLAs for 22 nuclear power units docketed and under NRC review. (T. 1115). Priority will be given to the active nuclear projects by the NRC. (Id.). The NRC's limited resources will not be applied to newly initiated or renewed nuclear projects ahead of the nuclear projects actively under development or construction. (Id.). As a result, termination of the EPC agreement and cancellation of the LNP will likely end the development of new nuclear generation in Florida, denying PEF, its customers, and the State the long-term benefits of additional base load nuclear generation.

Intervenors, however, are most concerned with the total project cost for the LNP because of the short-term customer rate impacts prior to the commercial operation dates for the units in 2021 and 2022. (T. 26-7, 32-33, 164-5). For this reason they contend customers cannot afford the project. (Id.; T. 30, 34, 37, 43-45). Intervenors are selective in the customer rate impacts they emphasize and they ignore the short- and long-term benefits of the LNP for customers as a result of the Company's decision to continue the project on a slower pace. (T. 1210-11).

For example, the decision to continue the project on a slower pace shifts over $1 billion in capital investment to the period after 2012 when the COL is expected from the NRC for the LNP. (T. 869, 954). This is one reason for the Company's decision to proceed with the project on a slower pace. (Id.). The effect is to reduce customer rate impacts due to the LNP in the

period 2010 to 2012 when the current recession has the greatest impact on customers. (T. 848-49, 898). Intervenors ignore this beneficial rate impact resulting from PEF's decision.

Intervenors focus on the rate impacts in the period 2013 to 2020, the year before the first Levy nuclear unit goes in service. (T. 147-49, 153). Even here, intervenors focus their attention on the rate impact of Levy alone, identified in Exhibit 188. (Id.). They ignore the full rate impacts that occur in the event the LNP is cancelled and other generation resources must be employed in place of the LNP identified in Exhibit 189. (T. 105, 152-53). Exhibit 189 compares the full rate impacts of the LNP option with its fuel and carbon cost savings benefits to the full rate impacts of an all natural gas resource plan. (See Ex. #189, p. 10NC-FPSCROG8-29-4). [24] When the full rate impacts in Exhibit 189 are considered, the beneficial rate impact to customers from the LNP is clear.

Customer rates do increase while the plants are being built but this is to be expected under the nuclear cost recovery statute. Within two years of commercial operation of both units, however, the customers will see a reduction in rates due to the fuel and carbon cost savings resulting from the operation of both units. (Id.). This beneficial rate impact continues and increases for the LNP: (i) by 2033 the LNP lowers customer rates by over $20 per 1,000 KWH; (ii) five years later, by 2037, the LNP lowers customer rates by over $30 per 1,000 KWH; (iii) in less than twenty years after commercial operation of both units the LNP lowers customer rates by over $40 per 1,000 KWH; and (iv) just six years later the LNP lowers customer rates by over $60 per 1,000 KWH. (Id.). With these long-term customer rate reductions – which the intervenors ignore – PEF's customers cannot afford not to have the LNP go forward.

[24] Another difference between Exhibit 188 and Exhibit 189 is that Exhibit 188 reflects the estimated residential rate impact on a $/1,000 KWH basis while Exhibit 189 reflects the estimated rate impact on a retail average electric rate $/1,000 KWH basis. The result is that the rate impact for the estimated residential rate is higher than the rate impact for the retail average electric rate.

For all these reasons, PEF's decision to continue with the LNP is certainly reasonable. That does not mean, however, that the decision is not difficult, because other reasonable decisions, including project cancellation, could be made under the circumstances. But, as Mr. Lyash explained, in making this decision it is important to remember the fundamental question at issue: "The question ... --- what policy, energy policy does the State of Florida want to support? And given that, what action should we take and what alternatives should we consider? The Company firmly believes that nuclear continues to be an important part of the long-term energy mix and that to walk away from this would be a mistake. That's the way I would characterize my feeling about the project. Not bullish, but eyes wide open to both the costs and the benefits." (T. 1211). The Company's decision -- considering both the short and long term costs and benefits -- is therefore not only a reasonable decision but also the right decision for PEF, our customers, and the State.

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?

PEF Position:

Yes, the Commission should approve what PEF submitted because PEF's detailed analysis demonstrates the long-term feasibility of completing the CR3 Uprate project. The CR3 power uprate will provide customers substantial benefits for the extended life of the CR3 plant and enhanced fuel diversity on PEF's system. All of these benefits will be achieved and the full 180 MWe will be realized when the project is completed after the next CR3 refueling outage, and, therefore, the project is feasible.

The Undisputed Evidence Demonstrates that the CR3 Uprate Project is Feasible and will Provide Florida Customers Substantial Fuel Savings Benefits.

The undisputed evidence demonstrates that the CR3 Uprate project is feasible and will provide customers substantial fuel savings benefits for the extended life of CR3 and enhanced fuel diversity on PEF's system. (T. 362-68). As Mr. Franke explained, the net present value of

the fuel savings alone from the Uprate project is estimated at over $801 million, and the estimated savings far exceed the current total project costs. (T. 366-88; Ex. #226, p. 7). Further, the first two phases of the three-phase Uprate project were completed and no material issues are anticipated for Phase 3, which will be performed during the plant's next scheduled refueling outage. (T. 363-64). This project is technically, legally, and economically feasible. (T. 362-68; Ex. #206, p. 229).

No intervenor or Staff witness presented any evidence disputing the feasibility of the CR3 Uprate. In fact, OPC witness Dr. Jacobs agreed PEF should continue work on the Uprate project and that he was not testifying that the CR3 Uprate schedule is imprudent. (T. 732-33).[25] Based on the undisputed evidence the feasibility of the CR3 Uprate was clearly demonstrated and the Commission should find the project is feasible.

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?

PEF Position:

*Capital Costs (System) $118,140,493; (Jurisdictional, net of joint owners) $87,458,545.
O&M Costs (System) $821,773; (Jurisdictional, net of joint owners) $762,529.
Carrying Costs $14,351,595 and a base revenue requirement of $396,018.

[25] Dr. Jacobs does recommend "that the Company provide a full update of the status of the LAR at the next NCRC hearing," (T. 722), and that the Commission require this update include a demonstration "that the project remains economically feasible and that [PEF's] project schedule was prudent." (Id.) The Company is already required to provide an updated feasibility analysis each year pursuant to the nuclear cost recovery rule. There is, therefore, no reason for the Commission to require PEF to provide the Commission with an analysis the Company is already required to provide. Further, this recommendation necessarily involves improper hindsight review because Dr. Jacobs testified that he is not expressing an opinion now that the CR3 Uprate project schedule is imprudent, he agrees PEF should continue work on the EPU, but if the NRC should deny PEF's LAR in the future the Commission should review the prudence of PEF's current project schedule and EPU work. (T. 726-27, 732-33). As Mr. Franke explained, the prudence of PEF's current project schedule and EPU work cannot depend on the NRC's LAR determination in the future because the Company must make decisions today whether or not to continue with the installation of modifications to achieve the EPU. (T. 835). This being said, however, PEF fully expects to receive approval from the NRC for its LAR, and Dr. Jacobs admits that he would have no issue with the prudence of the EPU if PEF receives such approval. (T. 721-22, 732).

The net amount of -$244,765 should be included in setting the allowed 2011 NCRC recovery. The 2009 variance is the sum of an O&M over-projection of $9,999, under-projection of carrying charges of $122,005 and an over-projection of adjustments of $356,771.*

The Actual 2009 Costs Incurred by PEF for the CR3 Uprate Project are Prudent.

The evidence demonstrates that PEF's 2009 costs for the CR3 Uprate are prudent. (T. 313-27). Mr. Franke explained that the CR3 Uprate is planned for completion in three scheduled refueling outages. (T. 316). Phase 1 was installed during the 2007 outage and Phase 2, a series of improvements to the efficiency of the secondary plant or Balance of Plant ("BOP") work, was completed during 2009. (T. 316-17). The 2009 work included among other things installation of four moisture separator reheaters, two secondary cooling heat exchangers, two turbine bypass valves and mufflers, and multiple other equipment modifications and installations. (T. 317, 323). Mr. Franke testified these activities were necessary to the CR3 Uprate and the costs were reasonably and prudently incurred for them. (T. 317, 323-24). No intervenor or staff witness disputes any of the BOP 2009 activities as unnecessary to the Uprate project, nor do they challenge any of the costs for these activities as excessive or unnecessary. Staff witnesses note that the project remained "on schedule with minor variance and no major issues." (See Ex. #77, p. 12). As a result, the costs for this 2009 CR3 Uprate work are clearly prudent.

In 2009, PEF also performed work for the final phase known as the extended power uprate ("EPU") phase, including work associated with the Company's License Amendment Request ("LAR") to the NRC. (T. 320, 325). Mr. Franke explained that LAR approval is necessary for the Company to increase the power at CR3 once the project is complete. (T. 349-50). The Company admits the initial draft LAR prepared primarily by AREVA in 2009 was not the quality it should have been and that the Company should have caught and corrected it earlier than the Company did. (T. 448-49, 453-56, 824-25). But the Company did catch it in July 2009 with an expert panel review the Company established as a part of its project management and

contracting controls. (T. 417-18, 826-27; Ex. #196). Mr. Franke testified that the Company accepted the expert panel and subsequent internal audit recommendations and implemented them, took AREVA to task for its poor quality work, and required AREVA to fix the LAR draft at their own cost. (T. 462-65, 829). Subsequent expert panel reviews confirmed AREVA fixed the initial draft quality issues. (T. 829; Ex. #83). But AREVA was paid no more than the original contract amount for this work. The undisputed evidence shows that AREVA will only be paid the original contract amount of [redacted] to write the initial LAR section reviewed by the expert panel in July 2009 and that AREVA corrected its quality issues with this original submittal at its own cost. (T. 449, 455-56, 475; Ex. #82).[26]

Staff witnesses did question two change orders PEF executed with AREVA for additional LAR and NSSS engineering work. (Ex. #77, p. 48). Change Order 23 was for work to re-write the LAR to comply with a revised LAR template to meet evolving industry standards and NRC expectations that did not exist at the time PEF initially contracted with AREVA for the draft LAR work. (T. 464, 472-76, 488, 827-31; Ex. #80). Change Order 25 was for additional engineering work scope required to support the LAR and meet these evolving NRC expectations and LAR submittal standards. (T. 827-31; Ex. #81). There is no evidence to the contrary. All costs incurred for the LAR for 2009 were, therefore, necessary for the CR3 Uprate and its associated LAR application, and thus, were prudently incurred. (T. 825-31).

Neither OPC nor any intervenor witness provided evidence disputing this. In fact, OPC witness Dr. Jacobs stated that his assignment included reviewing and evaluating PEF's request to

[26] Mr. Foster was asked by OPC and testified that no costs were removed from the Company's cost recovery request because of the original deficient work by its vendor AREVA. (T. 121-23). No costs were removed because no imprudent costs were included in the filing as both Mr. Foster and Mr. Franke explained. (Id.; T. 461-62). AREVA fixed the initial draft LAR at its own cost and AREVA was paid no more than the original contract amount for this work. Only that amount was included for this work in the Company's request for cost recovery. (T. 829-30).

collect historical (2009) costs for the CR3 Uprate and that he had no opinion that any CR3 Uprate costs for 2009 are imprudent. (T. 731).[27]

OPC did question PEF's 2009 CR3 Uprate budget variance and the variance descriptions in its 2009 true-up filing on the apparent belief that the deferral of the Low Pressure Turbines and Point of Discharge Cooling Tower costs from the 2009 estimate to 2010 and 2011 masked the actual 12% or $52.8 million (financial view) increase in total project costs in 2009. (See Prehearing Order No. PSC-10-0538-PHO-EI, p. 31). OPC apparently contends this variance was not satisfactorily explained in the testimony. (Ex. #206, p. 168). This is a complaint without substance.

First, in its 2010 testimony and NFRs, PEF included the variance descriptions required by Rule 25-6.0423(8)(D), F.A.C.[28] (T. 58, 62-5, 319-27; Exs. #3, #7, #8, #9). Second, PEF provided this variance information to Commission Staff and the parties. A line-by-line description of the increase and comparison of the 2009 estimate to 2009 actuals was included in PEF's response to the very first Data Request from the Staff auditors, in the CR3 Uprate Integrated Project Plans ("IPPs") provided in discovery, in interviews with auditors, and in OPC's deposition of Mr. Franke. (See Exs. #192, #200, #206, pp. 153-60, 168-74, 260-62). Third, and most significantly, OPC does not claim this increase in the project cost was for work

[27] On re-direct OPC had Dr. Jacobs admit that he was not expressing the opinion that the CR3 Uprate costs were prudent. (T. 731). OPC elicited the same opinion for Dr. Jacobs' admissions that he also reviewed and evaluated the LNP historical (2009) costs and the CR3 Uprate and LNP projected (2010 and 2011) costs and also found no reason to opine that those actual and projected costs were imprudent or unreasonable. (T. 731-33). This, again, is a distinction without any meaning because Dr. Jacobs admitted he reviewed the 2009 and 2010-11 costs for both projects and, if he determined from his review that any of those costs were imprudent or unreasonable, he would have said so. The point is, after he reviewed these actual and projected costs for both projects he testified he was not offering an opinion that any of the actual LNP or CR3 Uprate costs he reviewed were imprudent or any of the LNP or CR3 Uprate projected costs were unreasonable. (T. 729-33).

[28] Rule 25-6.0423(8)(D) states: Final true-up filings and actual/estimated true-up filings will include monthly expenditures incurred during those periods for major tasks performed within Site Selection, Preconstruction and Construction categories. A utility shall provide annual variance explanations comparing the current and prior period to the most recent projections for those periods filed with the Commission.

or material that was not needed, or excessive payments for work or material that was needed, for the CR3 Uprate.

Mr. Franke testified that all of the 2009 costs were necessary for the CR3 Uprate and that the costs were reasonable and prudently incurred. (T. 313-36).[29] Moreover, staff auditors looked at the total project costs and only noted that the costs had increased 12% from $426.6 million to $479.4 million. (See T. 834; Ex. #77, p. 52). If staff had any concern with the total project costs they did not express it, and Staff certainly knows how to bring information to the attention of the Commission when they feel it is warranted. This increase in costs is within industry standards for uprates, especially considering the acknowledged technical complexities of PEF's EPU. (T. 834).[30] There is no evidence that the $52.8 million increase in total project costs is unreasonable or imprudent.

Finally, the relevance of the increase in total project costs must be considered together with the expected project benefits. This is exactly what PEF does every year and did this year in its updated feasibility analysis for the Uprate project. This feasibility analysis demonstrates the project is feasible with the increase in total project costs. In fact, the current total project costs pales in comparison to the estimated $801 million in net fuel savings expected from the Uprate project. (T. 388). OPC witness Dr. Jacobs does not contest the feasibility of the Uprate project. (T. 716-22, 731-32). The reasonableness of the total project costs is, therefore, well established.

[29] OPC counsel debated extensively with Mr. Franke about the inclusion of the original transmission cost estimates for the CR3 Uprate in the original total project cost estimate for comparison to the current total project cost estimate to determine the total and percentage amount of the increase over time. (T. 374-75). Mr. Franke pointed out repeatedly that, for comparison purposes, you cannot pick and choose work scope that was reduced or eliminated as unnecessary for the project after further engineering analysis and ignore other areas where additional work scope was identified as necessary when you compare the total project costs over time. (T. 390-91).

[30] OPC witness Dr. Jacobs noted that PEF's CR3 Uprate project costs compare favorably to FPL's planned power uprates project costs on a dollar per Kw basis. (T. 834).

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?**

PEF Position:

*Capital Costs (System) $66,334,227; (Jurisdictional, net of joint owners) $32,827,539.
O&M Costs (System) $1,234,649; (Jurisdictional, net of joint owners) $1,109,484.
Carrying Costs $7,557,070 and a base revenue requirement of negative $746,776.

The Commission should also approve an estimated 2010 EPU project true-up amount of $2,379,874 to be included in setting the allowed 2011 NCRC recovery. The 2010 variance is the sum of an O&M under-projection of $895,281, plus an under-projection of carrying charges of $2,231,369 plus an under-projection of other adjustments of negative $746,776.*

PEF's Actual/Estimated 2010 Costs for the CR3 Uprate are Reasonable.

The undisputed evidence presented by PEF witnesses Mr. Franke and Mr. Foster demonstrates that PEF's actual/estimated 2010 costs for the CR3 Uprate project are reasonable. (T. 74-81, 90-98, 341-59, 803-34). Indeed, OPC's witness Dr. Jacobs agreed that he conducted a review and evaluation of PEF's request for authority to collect actual/estimated 2010 costs associated with the CR3 Uprate and he expressed no opinion that any specific estimated 2010 CR3 Uprate cost is unreasonable. (T. 731-32). Staff witnesses also conducted a review of the CR3 Uprate and did not identify any specific 2010 cost as unreasonable. (T. 751-52, 755-56; Ex. #77). Please also see PEF's response to Issues 3A, 8 and 9 above.

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?**

PEF Position:

*Capital Costs (System) $67,828,699; (Jurisdictional, net of joint owners) $52,297,867.
O&M Costs (System) $481,102; (Jurisdictional, net of joint owners) $423,093.
Carrying Costs $10,023,829 and a base revenue requirement of $3,424,764.*

PEF's Projected 2011 Costs for the CR3 Uprate are Reasonable.

The undisputed evidence presented by PEF witnesses Mr. Franke and Mr. Foster demonstrates that PEF's projected 2011 costs incurred for the CR3 Uprate project are reasonable. (T. 74-81, 90-98, 341-59, 803-34). OPC's witness Dr. Jacobs conducted a review and evaluation of PEF's request for authority to collect projected 2011 costs associated with the CR3 Uprate and he expressed no opinion that any specific estimated 2011 CR3 Uprate cost is unreasonable. (T. 731-32). Staff witnesses also conducted a review of the CR3 Uprate and did not identify any specific 2011 cost as unreasonable. (T. 751-52, 755-56; Ex. #77). Please also see PEF's response to Issues 3A, 8 and 9 above.

ISSUE 12: 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?

PEF Position:

*Capital Costs (System) [redacted] (Jurisdictional) $255,963,530.
O&M Costs (System) $4,500,975; (Jurisdictional) $4,020,056.
Carrying Costs $36,124,710 and a base revenue requirements of $7,619.

The net amount of $4,192,819 should be included in setting the allowed 2011 NCRC recovery.

The 2009 variance is the sum of over-projection preconstruction costs of $8,749,309, plus an over-projection of O&M expenses of $911,232 plus an under-projection of carrying costs of $13,845,741, plus an under-projection of other adjustments costs of $7,619.*

The Undisputed Evidence Demonstrates that PEF's Actual 2009 Costs Incurred for the LNP are Prudent.

The undisputed evidence presented by PEF witnesses Ms. Hardison, Mr. Karp, Mr. Garrett and Mr. Elnitsky demonstrates that the costs PEF incurred in 2009 for the LNP are prudent. (T. 55-62, 534-44, 596-610, 846-66, 884).

OPC questioned only whether certain transmission project costs that PEF removed when the Company decided to transfer a project from the LNP to PEF's base load transmission due to

the shift in the Levy Units 1 & 2 in-service dates were, in fact, removed. (Prehearing Order PSC-10-0538-PHO-EI, p. 33; Ex. #218, p. 164). All costs associated with this Central Florida South Substation project were completely removed from the LNP, and the Company's cost recovery request, as described by PEF in exhibit #191 and explained by Mr. Elnitsky during his deposition. (See Ex. #218).[31] Indeed, OPC witness Dr. Jacobs agreed that he reviewed and evaluated PEF's request for authority to collect historical (2009) LNP costs and he expressed no opinion that any 2009 cost was imprudent. (T. 730).

Staff also raised a question regarding the timing, but not the substance, of costs incurred for the LNP Operational Readiness Group. (See Ex. #77, pp. 23-4). Mr. Elnitsky and Ms. Hardison explained that these costs for 2009 were associated with PEF's involvement in the AP1000 Owner's Group ("APOG"). (See T. 589-90, 885-87; Ex. #218, p. 227). Work with APOG continues today at a pace that is consistent with PEF's project schedule and in alignment with the other APOG members to capture efficiencies associated with doing this work in parallel with the APOG members. (See Ex. #218, pp. 131-35, 227). Some work also continued during 2009 because the Company's decision to shift the LNP schedule was not finalized until March 2010. (Ex. #218, pp. 134-36). As a result, the Operational Readiness Group costs incurred in 2009 were prudent.

The evidence demonstrates that PEF's actual 2009 costs are reasonable and prudent.

[31] OPC also requested reconciliation of the 2008 Project to Date estimates in the 2008 IPP for the Central Florida South Substation Expansion project of $5.1 million and the numbers described in Hearing Exhibit #191. The 2008 Levy IPP clearly contains an estimate for the Central Florida South Project and is not actual costs incurred as Exhibit #191 depicts. As Mr. Elnitsky explained, the difference is that the costs estimated for 2008 and 2009 for the Central Florida South Substation in the 2008 Levy IPP were not actually incurred in those amounts so the costs estimates from the IPP and the costs actually incurred and taken out of the Levy cost recovery request are not going to be identical. (Ex. # 218, pp. 168-71).

ISSUE 13: **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?**

PEF Position:

*Capital Costs (System) [redacted]; (Jurisdictional) $143,951,411.
O&M Costs (System) $4,211,926; (Jurisdictional) $3,687,427.
Carrying Costs $50,652,578.

The Commission should also approve an estimated 2010 LNP project true-up amount of $8,121,477 to be included in setting the allowed 2011 NCRC recovery.

The 2010 variance is the sum of an under-projection of Preconstruction costs of $11,835,352, plus an over-projection of O&M expenses of $745,625 plus an over-projection of carrying charges of $2,968,249.*

PEF's Actual/Estimated 2010 Costs for the LNP are Reasonable.

The undisputed evidence presented by PEF witnesses Ms. Hardison, Mr. Karp, Mr. Elnitsky and Mr. Foster demonstrates that PEF's actual/estimated 2010 costs incurred for the LNP are reasonable. (T. 74-85, 558-70, 617-30, 846-77, 887). OPC's witness Dr. Jacobs reviewed and evaluated PEF's request for authority to collect actual/estimated 2010 costs for the LNP and he expressed no opinion that any specific estimated 2010 LNP cost is unreasonable. (T. 730). Staff witnesses also did not identify any specific 2010 cost as unreasonable. (T. 748-51, Ex. #77). Please also see PEF's responses to Issues 2, 3A, 6 and 7.

ISSUE 14: **What system and jurisdictional amounts should the Commission approve as reasonably projected 2011 costs for PEF's Levy Units 1 & 2 project?**

PEF Position:

*Capital Costs (System) [redacted]; (Jurisdictional) $48,464,396.
O&M Costs (System) $4,343,901; (Jurisdictional) $3,823,883.
Carrying Charges $46,378,950. (Foster, Karp, Hardison).*

PEF's Projected 2011 Costs for the LNP are Reasonable.

The undisputed evidence presented by PEF witnesses Ms. Hardison, Mr. Karp, Mr. Elnitsky and Mr. Foster demonstrates that PEF's projected 2011 costs incurred for the LNP are reasonable. (T. 74-81, 85-90, 558-70, 617-30, 846-77, 888-89). Again, OPC's witness Dr. Jacobs reviewed and evaluated PEF's request for authority to collect projected 2011 costs for the LNP and he expressed no opinion that any specific projected 2011 LNP cost is unreasonable. (T. 730). Staff witnesses also did not identify any specific 2011 cost as unreasonable. (T. 748-51, Ex. #77). Please also see PEF's responses to Issues 2, 3A, 6 and 7.

ISSUE 15: What is the total jurisdictional amount to be included in establishing PEF's 2011 Capacity Cost Recovery Clause factor?

PEF Position:

The total jurisdictional amount to be included in establishing PEF's 2011 Capacity Cost Recovery Clause factor should be $163,580,660 (before revenue tax multiplier). Please see Appendix A for a breakout of these costs.

Appendix A

Issue 15 Detailed Support

Issue 15				
CR3 2011 Uprate Revenue Requirement Summary	**2009 True Up**	**2010 A/E True Up**	**2011 Projected**	**Total**
O&M	(9,999)	895,281	423,093	1,308,375
Carrying Costs	122,005	2,231,369	10,023,829	12,377,203
Other Adjustments	(356,771)	(746,776)	3,424,764	2,321,217
Total Uprate 366.93 Revenue Requirements	(244,765)	2,379,874	13,871,686	16,006,795

Levy 2011 PEF Levy 1 & 2 Revenue Requirement Summary				
	2009 True Up	2010 A/E True Up	2011 Projected	Total
Site Selection & Preconstruction	(8,749,309)	11,835,352	25,056,735	28,142,778
O&M	(911,232)	(745,625)	3,823,883	2,167,026
Carrying Costs	13,845,741	(2,968,249)	46,378,950	57,256,442
Other	7,619	-	-	7,619
Total Levy 366.93 Revenue Requirements	4,192,819	8,121,478	75,259,568	87,573,865
Plus: 2011 Amortization of Proposed Deferral			60,000,000	60,000,000
Proposed Levy Revenue Requirements for 2011 CCRC				147,573,865

Proposed NCRC Revenue Requirements for 2011 CCRC	163,580,660

III. CONCLUSION.

Section 366.93 requires that the Commission allow the recovery of prudent and reasonable nuclear project costs. The evidence demonstrates that PEF's LNP and CR3 Uprate costs are either prudent or reasonable. No party presented any convincing contrary evidence. PEF also demonstrated the long-term feasibility of completing both the CR3 Uprate and LNP. The Commission should therefore permit the recovery of all of PEF's costs in this proceeding.

For all of the foregoing reasons, the Commission should grant PEF's Petition for Cost Recovery through the NCRC for its CR3 Uprate and LNP.

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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 electronic and U.S. Mail this 10th day of September, 2010.

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