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**Attachments:** FIPUG Post-Hearing Brief 9.10.10.pdf

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In accordance with the electronic filing procedures of the Florida Public Service Commission, the following filing is made:

- a. The name, address, telephone number and email for the person responsible for the filing is:

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- b. This filing is made in Docket No. 100009-EI.  
c. The document is filed on behalf of Florida Industrial Power Users Group.  
d. The total pages in the document are 22 pages.  
e. The attached document is Florida Industrial Power Users Group's Post-Hearing Statement of Issues and Positions and Post-Hearing Brief.

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9/10/2010

**BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION**

In re: Nuclear cost recovery clause.

DOCKET NO. 100009-EI

FILED: September 10, 2010

**THE FLORIDA INDUSTRIAL POWER USERS GROUP'S  
POST-HEARING STATEMENT OF ISSUES  
AND POSITIONS AND POST- HEARING BRIEF**

The Florida Industrial Power Users Group (FIPUG), by and through its undersigned counsel, files this Post-Hearing Statement of Issues and Positions and Post-Hearing Brief. FIPUG reaffirmed its party status in this annual proceeding by filing notice with the Commission on January 5, 2010.

**BASIC POSITION AND SUMMARY**

FIPUG supports the development of cost effective, reasonable and prudent energy sources to serve Florida consumers. However, the development of such energy resources, particularly nuclear power plants, must be accomplished in a reasonable and prudent fashion. Before ratepayers pay out billions of dollars to fund nuclear projects, the Commission must ensure that the benefits of the touted project will actually materialize. The projects under consideration for Progress Energy Florida (PEF), particularly the Levy Nuclear Project (LNP), appear to be in grave jeopardy. Ratepayers should not be required to continue to be the sole source of funds for these projects and bear the entire risk of their failure.

Further, because nuclear projects require huge investments and yield benefits (if any) only far out into the future, the Commission should develop a risk sharing mechanism so that the risk and uncertainties of these projects will not fall entirely to retail ratepayers but will be shared

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appropriately with the utilities. Each PEF project before the Commission in this proceeding is discussed below.

### LNP

PEF seeks cost recovery in this proceeding for two nuclear projects: the LNP and the Crystal River 3 Extended Power Uprate Project (CR3 Uprate). Both of these projects have experienced difficulties which call into question management decisions and whether the Commission should permit any further advance cost recovery.

As PEF's own testimony in this case demonstrates, the LNP has now been delayed at least five years past the in-service dates PEF provided in its determination of need for the project. In addition, all parties, including PEF, agree that the LNP faces uncertainty and risk in the future. Such risks include licensing uncertainty, uncertain economic recovery, the status of state and federal regulations regarding nuclear power as well as green house gas emissions legislation.

PEF admits there are grave risks surrounding the project. However, it has proposed that it be permitted to continue to pursue the combined operating license (COL) for the LNP while mothballing the rest of the project and making a decision sometime in the undetermined future as to whether to actually proceed with the project. This proposal will continue to cost ratepayers money with no assurance that the LNP will ever be built and provide any benefits at all to ratepayers.

FIPUG requests that the Commission take action to relieve the strain that this project has placed unfairly on ratepayers. To do that, the Commission should defer cost recovery or place cost recovery at risk as to the LNP until it is determined whether and/or when PEF will go forward with the LNP.

### **CR3 Uprate**

Like the LNP project, the CR3 Uprate project is also behind schedule. Though much of the cost of the project has already been funded by the ratepayers, PEF has not even filed its License Amendment Request (LAR) with the Nuclear Regulatory Commission (NRC). The LAR is necessary before the project can move forward. It is also uncertain as to whether the CR3 Uprate will provide the full uprate proposed as it is the largest megawatt uprate of this type ever sought from the NRC.

Finally, the Commission should immediately commence a proceeding to develop a risk sharing mechanism so that the entire burden of these large and uncertain projects does not fall solely to ratepayers. If PEF has something at risk in these ventures, some “skin in the game,” it is more likely that expenditures will be held under control and reasonable steps will be taken as to the projects at issue.

### **ISSUES AND POSITIONS<sup>1</sup>**

**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.?

**FIPUG:** \*No. The intent of section 366.93, Florida Statutes, is to encourage the construction of nuclear power plants to serve the ratepayers. Currently, PEF is not actively pursuing construction of the LNP and has no clear intent to build the project. Thus, it no longer complies with the statute.\*

### **Discussion**

Section 366.93, Florida Statutes, permits utilities to recover costs from customers in advance for the construction of nuclear power plants. Mr. Lyash admits that the Legislature enacted section 366.93, Florida Statutes, to encourage investment in nuclear generation. He further testified that the nuclear legislation resulted from state policy designed to increase fuel

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<sup>1</sup> Issues related to Florida Power & Light have been deferred and thus are not addressed here.

diversity and reduce dependence on fossil fuels. (Tr. 1057). Mr. Lyash also discussed the benefits of nuclear generation which the Florida Legislature recognized. (Tr. 1088). Clearly, none of these benefits or goals will be realized if a nuclear project is not built.

While FIPUG does not necessarily disagree with Mr. Lyash's statements regarding section 366.93, it appears obvious that section 366.93 was enacted in contemplation that nuclear power plants would actually be *constructed*. The statute envisions that a utility will move from siting to ultimate construction. The testimony in this case makes it clear that at this point, PEF is not committed to construction of the LNP.

PEF has told the Commission and its customers that it is doing an about face regarding the LNP. Rather than moving ahead with the project, PEF currently does not know if the project will be constructed at all. Nonetheless, PEF wants to continue to spend ratepayer money on activities related to the COL, with no commitment to ever construct the plant. In fact, as PEF itself admits, it may cancel the LNP entirely, but wants to wait three more years (and millions more ratepayer dollars) to make that decision. Because PEF does not have a clear intent to bring this project to completion, it no longer qualifies for advance recovery under section 366.93, Florida Statutes.

**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?

**FIPUG:** \*Yes. The Commission must ensure that customers' rates are fair, just and reasonable. The Commission must closely monitor nuclear projects which are extraordinarily expensive and may result in costs which unfairly shift totally to ratepayers. The Commission should develop a risk sharing mechanism in a future proceeding.\*

## **Discussion**

Because the utilities have annual cost recovery for monies spent on nuclear projects far in advance of such projects generating any power, they have little incentive to control costs. They know that they will receive dollar for dollar recovery for nuclear projects that may never be built. This puts ratepayers in the position of writing a “blank check” for such projects with the hope that they will benefit from such projects far in the future. As this docket demonstrates, costs for highly expensive nuclear projects can quickly escalate requiring massive funds from ratepayers with little firm commitment to bring a project to fruition.

Section 366.05(1), Florida Statutes, in describing the Commission’s powers, provides that:

In the exercise of such jurisdiction, the commission shall have the power to prescribe fair and reasonable rates and charges....

Similarly, section 366.06(1), Florida Statutes, describes the procedure for changing rates and states:

The commission shall have the authority to determine and fix fair, just, and reasonable rates that may be requested, demanded, charged, or collected by any public utility for its service.

Based on these principles, which represent the core of the Commission’s responsibilities, the Commission has the authority to keep customers’ rates from increasing to a point where they are unfair, unjust and unreasonable. Exercise of the Commission’s power is especially apt in the case of nuclear matters, where the costs are often quite large and any benefits to be received far in the future. Further, as to the PEF LNP, such a standard is critical to deal with costs that escalate every year for a plant that even PEF admits may never been constructed. FIPUG concurs with the suggestion of OPC witness Jacobs that “due to the tenuous nature of the LNP

project and the lack of foreseeable resolution of the uncertainties” the Commission should consider placing some of the risk for this project on PEF. (Tr. 714).

The Commission should immediately begin development of a risk sharing mechanism for nuclear projects in order to introduce an incentive to utilities to control costs and to ensure that ratepayers do not have to shoulder the entire burden of the large costs for projects whose benefits, if any, will not be received until many years in the future. If the Commission does not pursue some mechanism by which the utilities share the risk of these large projects with ratepayers, the utilities will continue to proceed without any risk to their bottom line, with all expenses funded entirely by ratepayers.

**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?**

**FIPUG:**     \*No. As to the CR3 Uprate, there are indications of inadequate management including work performed by AVERA that would not have been needed had the project been properly managed.\*

**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?**

**FIPUG:**     \*No. As to the CR3 Uprate, PEF has not demonstrated that the project delays, including submission of the LAR, and the costs related to the revised LAR are prudent and reasonable. Excessive and duplicative costs have been incurred due to inadequate oversight of the preparation of the yet to be submitted LAR.\*

**Discussion of Issues 4 and 5**

The CR3 Uprate has experienced delays since its inception. The project was approved for a determination of need with an in-service date of 2011. Order No. PSC-07-0119-FOF-EI. That date has now slipped to 2012. (Tr. 343).



PEF must file a LAR and receive approval of that request to continue with Phase 3 of the CR3 Uprate project. (Tr. 719). PEF's many estimates of when the LAR would be filed have continued to be pushed out further in time, changing even as testimony was filed in this docket. In last year's testimony, PEF indicated that it intended to file the LAR in the fall of 2009. PEF then said the LAR would be filed by March 2010. PEF in its April 30, 2010 testimony stated that the LAR would be filed by June 1, 2010. (Tr. 819). At the time of the hearing, PEF did not have a firm date for filing the LAR. These continued delays raise concerns about the project.

Further, the CR3 Uprate is the largest ever submitted in terms of increased power output. While most uprates have been in the 5% range, the CR3 uprate is in the range of almost 16%. This results in a highly technically challenging project. (Tr. 716). If the LAR, whenever submitted, is not approved, CR3 would not be able to operate at the higher power levels suggested and the benefits of the project will be lost. (Tr. 720). PEF has spent the bulk of the funds on the CR3 project before securing the essential LAR. (Tr. 720). As OPC witness Jacobs testified: "Essentially all the money will be spent before the Company knows if the NRC will approve the uprate." (Tr. 721). Certainly, the company could have reduced the risks of the project by securing the LAR prior to spending the bulk of the money on the uprate. (Tr. 721). If the company had pursued the LAR as originally planned, it would now know whether the LAR would be granted prior to expending the money for Phase 3. (Tr. 722). This would have been a much more prudent course of action.

In addition, further delays on the CR3 Uprate relate to the prolonged outage at CR3. The final phase of CR3 Uprate must be done in conjunction with the CR3 refueling. Due to the extended CR3 outage, the next refueling is scheduled for 2012. As Mr. Franke testified, the CR3

refueling date will continue to be evaluated. (Tr. 344). If the refueling is delayed, the uprate will be delayed.

Finally, it is unclear that money that was paid to AREVA to rewrite the LAR was not duplicative of prior activity. In regard to the preparation of the LAR, PEF retained AREVA to prepare the LAR. AREVA had never before done an uprate project LAR and management knew that. (Tr. 410). When AREVA's work product was received, PEF determined that AREVA had done a poor job. (Tr. 448). In June 2009, an expert panel was convened to look at the problems with AREVA. The panel presented its view that the LAR draft would not pass NRC review. (Exhibit No. 77, p. 47). This process caused a six-month delay as to the LAR, (Tr. 463), and should not be the responsibility of ratepayers.

Staff auditors recommended to the Commission that it consider

whether additional costs for the LAR restructuring/rewrite and the additional engineering scope by AREVA resulted from inadequate management oversight.

(Tr. 752; Exhibit No. 77 at 5). Had PEF appropriately staffed and supervised the LAR process, it would not have experienced the delay that it did or the additional AREVA costs to prepare the revised LAR.

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

**FIPUG:** \* No. Due to the tenuous nature of the LNP, the Commission should find the project is not feasible at this time, especially since PEF has been unable to secure any joint ownership agreement and ratepayers must fund the entire project. The Commission should not authorize further advance recovery for this project. It should also devise a risk sharing mechanism so that the burden of such projects does not fall entirely on ratepayers.\*

**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?

**FIPUG:** \*The numerous uncertainties and risks associated with the LNP raise questions as to whether PEF has pursued the most prudent course of action. The Commission should defer any advance cost recovery until the status of the LNP is determined. The Commission should also devise a risk sharing mechanism so that the burden of such projects does not fall entirely on ratepayers.\*

### **Discussion of Issues 6 and 7**

#### **Burden of Proof**

The burden of proof rests with PEF to prove that it has acted in a reasonable and prudent manner as to its activities in regard to the LNP.<sup>2</sup> In Order No. PSC-09-0024-FOF-EI at 12, in which the Commission considered the prudence of certain actions of FPL, the Commission held:

It has been well established both by us and the State's courts that the burden of proof lies with the utility who is seeking a rate change. (See Florida Power Corp. v. Cresse, 413 So. 2d 1187, 1191 Fla. 1982); Order No. PSC-01-0326-FOF-SU, issued February 6, 2001, in Docket No. 991643-SU, In re: Application for increase in wastewater rates in Seven Springs System in Pasco County by Aloha Utilities, Inc.; and Order No. 12654, issued November 3, 1983, in Docket No. 830001-EU, In re: Investigation of Fuel Adjustment Clauses of Electric Utilities).

Testimony in this case, from PEF's own witnesses, casts grave doubt on whether PEF has met this burden and whether it should be authorized to continue to collect advance payments from ratepayers for this long-delayed project. At end of day, it is the Commission which must decide on the reasonableness and prudence of PEF actions, and whether the burden PEF asks ratepayers to bear is simply too much when balanced against the risks and uncertainties of this project.

PEF claims it is entitled to recovery from ratepayers because no Staff or Intervenor witness contends that any of the costs the Company seeks are imprudent – PEF appears to

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<sup>2</sup> Contrary to the testimony of PEF witness Doughty, (Tr. 186), there is no presumption of management prudence in Florida. Mr. Doughty admitted that his view was not based on Florida law. (Tr. 250).

suggest erroneously that unless a particular cost is singled out for discussion, it has met its burden and may collect the monies it seeks.

PEF misses the point. FIPUG's concerns go beyond what an individual item or activity may cost. This is not a case where the cost of a specific item is in dispute. Rather, the concerns expressed and the positions taken relate to the way in which this entire project has proceeded, including the lengthy delays, increased cost, and the risk and uncertainty which have beset the LNP at every stage.<sup>3</sup> It is FIPUG's view that it is very uncertain whether this project will ever materialize. While PEF decides whether the project will proceed or not, retail ratepayers should not bear the entire risk and entire cost of the project.

#### LNP Delays

It is undisputed that the LNP is far behind schedule and far over budget. When this project was presented to the Commission, PEF testified that the LNP would be in service in 2016 and 2017. *See*, Order No. PSC-08-0518-FOF-EI at 2. Part of the basis for the Commission's decision to grant the determination of need was its finding that the units were needed in 2016 and 2017. *Id.* at 9.

PEF contended in the determination of need proceeding that "the economic benefits and savings justify the decision to add Levy Units 1 and 2 in 2016 and 2017." *Id.* at 3. The current projected in-service dates for the units are 2021 and 2022. (Tr. 970). Thus, only two years after the determination of need order, the project is five years behind schedule. And as Mr. Lyash testified, it is certainly possible that the in-service date for the LNP could slip even farther into the future. (Exhibit No. 239, Lyash deposition at 46).

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<sup>3</sup> Despite PEF's attempt to rely on the Commission audit, cross examination made it clear that staff auditors were looking at whether the appropriate project management controls were used by PEF in reaching its decision – *not* whether the decision under review was prudent. (Tr. 777-778).

In addition, PEF testified that it has experienced slow customer growth. This calls into question the timing of the units and the need for the both units, given the changing environment since the determination of need was granted. As Mr. Lyash testified:

In our experience, increases in customers and sales drive increases in retail load. With the recent declines in customers and sales due to the recession there is also a decline in the retail load that PEF currently serves. Less generation is therefore required at this time to meet the total energy demands required by that system load.

(Tr. 1042).

The continued delay in the LNP is due to numerous scheduling problems. These include the fact that PEF submitted its Combined Operating License Application (COLA) in conjunction with its Limited Work Authorization (LWA). PEF planned to get its LWA ahead of the Combined Operating License (COL) so that it could begin preconstruction site work before receipt of the COL. (Tr. 846-847). However, the NRC refused to process PEF's applications in that way, (Tr. 847), and PEF withdrew the LWA. (Tr. 847). This withdrawal caused a 20-month delay in the LNP schedule. (Tr. 847). The Company and the Consortium then looked at 24 and 36 month delays. (Tr. 856). PEF then decided that a 3-year shift for Levy 1 followed by an 18-month shift for Levy 2 was perhaps more likely. (Tr. 856). The LNP was then pushed out 3 years, (Tr. 1118), and finally "beyond 36 months." (Tr.862). Today, it is possible that the project may be delayed even further, (Tr. 970), all while retail ratepayers continue to fund it. And in fact, PEF itself has put the majority of the project "on hold." (Exhibit No. 209).<sup>4</sup>

#### LNP Costs

Not only is the LNP far behind schedule, but its costs have continued to increase. In the determination of need proceeding for the units, PEF estimated the cost to be \$17.2 billion. (Tr.

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<sup>4</sup> Exhibit No. 209 shows various timeline revisions for the LNP. While at the start of the project, PEF was moving forward with the project, more recent timelines show all major activity "on hold."

976). Currently, the cost is estimated to be \$22.5 billion, (Tr. 976), an increase of over \$5 billion in just two years. In addition, the further the project is pushed out, the more costs will increase.

Mr. Lyash testified PEF knew it:

would be spending more money on this project over the next three to four years and still face potential termination of the project at a future point in time.

(Tr. 1118).

It is also clear from PEF's own testimony that cancellation sooner rather than later is the more cost effective option. A comparison of Mr. Elnitsky's confidential numbers regarding the options the company presented shows these large differentials. (Tr. 866). And, the further out in time the cancellation occurs, the higher the cancellation costs will be. (Tr. 972).

Further, when PEF analyzed the option Public Counsel views as most likely – cancellation after receipt of the COL, the differential is even larger. A review of the difference between the cost of the Company's go slow option and cancellation after receipt of the COL appears in Exhibit No. 86. Mr. Lyash describes this difference as "clearly insignificant." (Tr. 1120). While PEF may find these amounts clearly insignificant, FIPUG (and probably all ratepayers) would find these costs very significant, particularly when the ratepayers must bear them all.<sup>5</sup>

#### LNP Risks

Not only is the project far behind schedule and over budget, many serious concerns exist as to whether the LNP will ever be built and whether it will ever generate electricity for ratepayers. While PEF touts the many benefits of the LNP, it is clear that such benefits will not

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<sup>5</sup> FIPUG also believes that specific costs related to Operational Readiness Group are imprudent. Commission Audit Staff said that it "has concerns about the timing and resources placed on this group during 2009, given the schedule flux and the company's consideration to cancel the project." (Exhibit No. 77 at p. 23). Despite the delays in the LNP, PEF seeks to continue to fund the Operational Readiness Group.

accrue if the project continues to be delayed or if it is cancelled, as PEF witnesses admit is a possibility they will continue to evaluate. (Tr. 975).

Mr. Glenn candidly admitted in his opening statement to the Commission that the Company does not disagree that the risk profile of the LNP has changed and that there is greater risk and uncertainty now than when the project first came before the Commission. (Tr. 15). Both PEF witnesses Lyash and Elnitsky spend pages and pages in their testimony describing to the Commission the risks and uncertainties the project faces. For example, Mr. Lyash spends some 30 pages testifying about the project's uncertainties. (Tr. 1039-1070). He summarized the risks and uncertainties as follows:

... There are a number of what we call "enterprise risks" for the project. The enterprise risks are those risks that are generally outside the control of the Company that can affect the company's ability to proceed with the project. ....

The enterprise risks include the following: the license and permitting activities I described above; world economic conditions and economic conditions in this country and Florida; economic conditions for the Company including capital market reactions; load growth impacts; customer rates for nuclear generation; continued state legislative support for nuclear generation; state energy efficiency policy and regulation; state energy and environmental policy and regulation; federal energy and environmental policy and regulation; and federal support for nuclear generation.

(Tr. 1039-1040).

Witness Lyash further said:

Over the past year, there has been more uncertainty with respect to the enterprise risks facing the project. On this point, there is no disagreement between PEF and the intervenor witnesses.

(Tr. 1112). PEF witness Lyash also testified that there is "a noticeable increase in the amount of uncertainty" associated with the LNP. (Tr. 1074). Mr. Lyash also said that PEF does not dispute

that “there is greater uncertainty and risk facing the LNP today and that the uncertainty has not diminished over the past year.” (Tr. 1109).

Mr. Elnitsky testified about the project risks as well:

.. these enterprise risks include the risks associated with schedule shifts due to licensing and permit review and approval delays, the economy, the Company’s sales, load, and financial position, federal and state energy and environmental policy, legislation, and regulation, and federal and state support for nuclear generation development. All of these enterprise risks can and do affect the development of the LNP. As explained by Mr. Lyash in his testimony, there was increasing uncertainty with respect to these enterprise risks in the fall of 2009. These risks, as described by PEF’s own witnesses, make the future of this project quite uncertain.

PEF witness Elnitsky testified there is additional uncertainty regarding the NRC LNP COL review schedule. (Tr. 901). Mr. Elnitsky also admitted that the Company cannot demonstrate that there will be more certainty regarding project risks by the time the COL is obtained and it is equally likely today that risks will increase as decrease. (Tr. 893).

OPC witness Jacobs agrees. He testified that it is just as likely PEF will not have sufficient clarity and certainty by 2013 as to enterprise risks to decide to continue the project. (Tr. 711). He further said that risks may not have diminished and may have actually increased. (Tr. 711).

PEF tells the Commission that its current intent is to move forward with the project. However, it also states that it will continue to evaluate the LNP and that cancellation is a possibility. (Tr. 975). It seems PEF is content to let this decision “ride” given the fact that ratepayers are funding it.

Despite PEF’s protestations to the contrary, it appears that PEF views the path it has chosen – the “go slow” option – as a way to postpone its decision as to the viability of the LNP



at the ratepayers' expense. It is obvious from PEF's testimony that the costs it now seeks to collect from ratepayers are simply intended to keep the project on life support, as the attorney for Public Counsel noted. As PEF mentions numerous times in its testimony, its current approach is to keep the nuclear "option" alive. As Mr. Lyash testified, PEF is attempting to "preserve the nuclear generation option." (Tr. 1095; Exhibit No. 239, Lyash deposition at 153). Mr. Lyash admitted that the decision to proceed with the LNP will be reevaluated after receipt of the COL. (Exhibit No. 239, Lyash deposition at 120). Further, PEF states that the "benefits are worth the costs." (Tr. 1034). FIPUG questions whether preserving the opportunity to move forward at some point in the future is worth the billions of dollars at stake.<sup>6</sup>

While PEF witnesses continually touted the many benefits of the LNP, of course, such benefits will never be realized if the project is not built. As PEF itself states in the Prehearing Order, the LNP has the "potential" to provide ratepayer benefit. Order No. PSC-10-0538-PHO-EI at 11. The issue is whether the potential will ever be realized.

#### LNP Rate Impact

Of critical importance to this Commission, and of course, to ratepayers<sup>7</sup> is the impact the LNP will have on customer rates. PEF also agrees that customer ability to pay<sup>8</sup> is a factor that the Commission should consider in this case. (Exhibit No. 239, Lyash deposition at 132). Currently, this project is projected to cost over \$22 billion, (Tr. 976), if it is ever built.

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<sup>6</sup> This is particularly the case when one of the most important and most sensitive inputs to the financial analysis of this project is fuel prices, which PEF is attempting to predict looking out 60 years. Even PEF admits that such an exercise is "fraught with uncertainties." (Tr. 1080).

<sup>7</sup> Despite the large projected rate increase due to the LNP, PEF did not poll any customers as to their view of the LNP or the three options PEF has put on the table. (Exhibit No. 239, Lyash deposition at 170).

<sup>8</sup> The Commission must bear in mind that the nuclear cost recovery charge is not the only pass-through charge on the customers' bills. Additional pass-through charges include the fuel adjustment charge, the capacity cost recovery charge, the environmental cost recovery charge, and the conservation cost recovery charge (which by some estimates is due to increase dramatically due to the new demand side management goals).

Exhibit No. 188 clearly illustrates the large impact that the LNP will have on customer rates. For example, before the LNP is even in service and before it generates any electricity, in 2019, customers will pay an astonishing \$49.29 per month per 1000 KWH. In 2020, they will pay almost \$50 per 1000 KWH. In addition, the LNP will more than double PEF's rate base. (Tr. 143).<sup>9</sup> Such increases are simply far too large and burdensome to be reasonable. Retail ratepayers simply cannot afford the \$22 billion price tag of this project on their own.

### Joint Ownership

Joint ownership of the LNP is a critical issue. Joint ownership is a way in which to relieve the retail ratepayers from the entire burden of the LNP costs. Despite the fact that PEF has been pursuing joint ownership since 2007, no joint owners have stepped forward and committed to the project. Thus, all the risk of payment for the LNP remains with retail ratepayers.

PEF recognizes the benefits of joint ownership. In the order approving the LNP determination of need, the Commission recounted the testimony of PEF witness Lyash on this topic:

Witness Lyash testified that depending upon the terms and conditions of any joint ownership agreement, a joint ownership arrangement might provide benefits to PEF's customers by, among other things, spreading the capital risks associated with a project of this magnitude.

Order No. PSC-08-0518-FOF-EI at 21.

In its 2009 order on the LNP, the Commission said:

We recognize the significant impact that Levy Units 1 and 2 will have on customer rates. Although long term benefits may be reduced, PEF should continue to pursue joint ownership

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<sup>9</sup> Mr. Foster testified that of the \$22.5 billion price tag for the project, over \$8 billion would be collected through the nuclear cost recovery clause and \$14 billion would go into base rates. (Tr 143).

opportunities in an effort to further mitigate initial rate impacts associated with the proposed project.

*Id.* at 23. Commissioner Skop concurred specially on this issue and said:

... I would encourage PEF to seek full pro-rata cost sharing participation, including any past costs recovered via the nuclear cost recovery clause, in conjunction with joint ownership discussions. The purpose of my comments were to ensure that the PEF ratepayers are adequately protected and will not pay more than their fair share of costs associated with the Levy 1 and 2 nuclear generation units.

*Id.* at 25. However, PEF has failed to interest any joint owner in committing to the LNP<sup>10</sup> because as Mr. Lyash admits there is uncertainty as to cost, timing, and risk. (Tr. 1097). This again leaves the ratepayers as funders of last resort for the LNP. While the Company continues to suggest that joint ownership is right around the corner, the facts simply do not bear this out as no commitment to the LNP has been made by any other entity.

Exhibit No. 222 illustrates this. It demonstrates that at least one potential joint owner, Seminole Electric Cooperative, Inc. (Seminole), has changed its plans based on the LNP delay. Seminole, in its 2009 Ten Year Site Plan, listed the LNP under its planned and prospective generating units. However, in its 2010 Ten Year Site Plan, Seminole has replaced the LNP with 4 combustion turbines. Thus, it appears that at least one potential joint owner is concerned with the uncertain status of the project and has moved on to other options.

It is fundamentally unfair to put retail ratepayers in such a position, especially when the Commission considers the many other surcharges now charged to customers. These include the fuel surcharge, the conservation surcharge, and the environmental surcharge, all in addition to the nuclear surcharge. At some point, consumers simply can no longer afford these ever continuing increases.

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<sup>10</sup> At least two other AP1000 projects have joint owners. (Tr. 741).

## Risk Sharing

Whether PEF proceeds with the LNP is a decision it will make. The question for the Commission is who will fund PEF's decision. Up until now, the entire cost of the project and the entire risk of delays, cost increases, and total cancellation have fallen on the backs of retail ratepayers. FIPUG believes that it is time to mitigate this burden, especially in light of the uncertainty facing the LNP. Because it is unclear if any benefits will ever flow from this project, the Commission should not approve any further advance cost recovery until the status of the project is clear and the numerous risks of proceeding have been reduced. Otherwise, current ratepayers may well end up funding a multi-billion dollar project which provides them no benefits at all. This guaranteed pass through for this project places an undue burden on retail ratepayers.

## Conclusion

Many serious doubts have been raised as to the viability of the LNP. But what has not been put in doubt by PEF is that it continues to expect the retail ratepayers to carry the cost burden on this project which may never generate the first kilowatt of electricity. The decision as to whether to proceed with LNP is PEF's; however, given the status of the project, as detailed above, no further advance cost recovery should be permitted.

**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?**

**FIPUG:**        \*No. The Commission should require PEF to submit a feasibility analysis that evaluates the project based on likely NRC-approved power levels as discussed in Issues 4 and 5.\*

**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?**

- FIPUG:** \*The Commission should disallow costs related to the work done by AREVA which were excessive and/or duplicative and were incurred due to inadequate management oversight during the preparation of the LAR. See discussion of Issues 4 and 5.\*
- 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?**
- FIPUG:** \*This is a fall out calculation depending on the Commission's decisions on other issues.\*
- ISSUE 11:** **What system and jurisdictional amounts should the Commission approve as PEF's reasonably projected 2011 costs for the Crystal River Unit 3 Uprate project?**
- FIPUG:** \* This is a fall out calculation depending on the Commission's decisions on the other PEF issues.\*
- 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?**
- FIPUG:** \* This is a fall out calculation depending on the Commission's decisions on the other PEF issues.\*
- 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?**
- FIPUG:** \* This is a fall out calculation depending on the Commission's decisions on the other PEF issues.\*
- ISSUE 14:** **What system and jurisdictional amounts should the Commission approve as reasonably projected 2011 costs for PEF's Levy Units 1 & 2 project?**
- FIPUG:** \*No further advance payments should be permitted for the LNP. It is unclear what the status of this project is and thus ratepayers should not be required to make advance payments for a project that may never provide them any electricity. See discussion of Issues 6 and 7.\*
- ISSUE 15:** **What is the total jurisdictional amount to be included in establishing PEF's 2011 Capacity Cost Recovery Clause factor?**

**FIPUG:**

\*No further advance payments should be permitted for the LNP. It is unclear what the status of this project is and thus ratepayers should not be required to make advance payments for a project that may never provide them any electricity. See discussion of Issues 6 and 7.\*

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**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that a true and correct copy of the foregoing FIPUG's Post-Hearing Statement of Issues and Positions and Post-Hearing Brief was served by Electronic Mail and United States Mail this 10<sup>th</sup> day of September 2010 to the following:

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