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Electronic Filing

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b. Docket No. 110009-EI

In re: Nuclear Cost Recovery Clause

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

d. There are a total of 26 pages.

e. The document attached for electronic filing is (**Prehearing Statement of the OPC Dkt. No. 110009-EI**).

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05136 JUL 25 =

FPSC-COMMISSION CLERK

7/25/2011

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Nuclear Cost Recovery
Clause.

DOCKET NO.: 110009-EI

FILED: July 25, 2011

PREHEARING STATEMENT OF THE OFFICE OF PUBLIC COUNSEL

The Citizens of the State of Florida, through the Office of Public Counsel, pursuant to the Order Establishing Procedure in this docket, Order No. PSC-11-0179-PCO-EI, issued March 29, 2011, hereby submit this Prehearing Statement.

APPEARANCES:

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Associate Public Counsels
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c/o The Florida Legislature
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On behalf of the Citizens of the State of Florida

1. WITNESSES:

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

<u>NAME</u>	<u>ISSUES</u>
Brian D. Smith	10, 10A
William R. Jacobs, Jr., Ph.D.	10, 10A, 10B, 11, 15A, 16, 17, 18, 23, 26, 27, 30, 33, 36, 37

DOCUMENT NUMBER-DATE

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FPSC-COMMISSION CLERK

2. EXHIBITS:

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

FPL

BDS(FPL)-1	Resume of Brian D. Smith
BDS(FPL)-2	EPU Revenue Requirement Impact
WRJ(FPL)-1	Resume of William R. Jacobs, Jr.
WRJ(FPL)-2	Resume of James P. McGaughy, Jr.
WRJ(FPL)-3	FPL Response to OPC Interrogatory No. 85
WRJ(FPL)-4	FPL October 2010 Graph, with Jacobs' Addition
WRJ(FPL)-5	March 2011 ESC Slide Indicating Engineering Difficulties
WRJ(FPL)-6	March 2011 ESC Slide Re Change in Outage Start Date
WRJ(FPL)-7	May 2009 ESC Meeting Presentation
WRJ(FPL)-8	July 26, 2009 ESC Meeting (Turkey Point Presentation)
WRJ(FPL)-9	July 26, 2009 ESDD Meeting(St. Lucie Presentation)
WRJ(FPL)-10	Email from Kundalkar to Nazar, May 30, 2009
WRJ(FPL)-11	Excerpts from Kundalkar Deposition
WRJ(FPL)-12	FPL Response to OPC Interrogatory No. 19
WRJ(FPL)-13	FPL Response to OPC Interrogatory No. 82

PROGRESS

WRJ(PEF)-1	Resume of William R. Jacobs, Jr.
WRJ(PEF)-2	Resume of James P. McGaughy, Jr.
WRJ(PEF)-3	Schedule and Cash Flow Analyses for the Project
WRJ(PEF)-4	News Article
WRJ(PEF)-5	August 23, SMC Strategic Planning retreat Scenario Analysis for Progress Energy Florida

3. STATEMENT OF BASIC POSITION

FPL

While, by the passage of Section 366.93, F.S., the Florida Legislature intended to encourage regulated utilities to build nuclear generating capacity, it expected the utilities to exercise prudence in doing so and empowered the Commission to protect customers against the costs of imprudence. Moreover, the Legislature did not, by the passage of Section 366.93, F.S., exempt nuclear projects from the requirement that utilities comply with Commission rules or alter the Commission's power to impose sanctions where necessary to enforce its rules. The factual and legal issues that OPC intends to raise during the 2011 Nuclear Cost Recover Clause ("NCRC") evidentiary hearing, which center on FPL's Extended Power Uprate ("EPU") projects, call on the Commission to invoke each of these powers. Specifically, OPC's experts will demonstrate that, due to the extreme degrees of complexity and uncertainty to which its EPU uprate projects exposed FPL and FPL's customers, FPL's decision to "fast track" (a term of art which means abandoning traditional construction procedures, processes and sequences designed to control price for the sake of meeting an otherwise unachievable in-service date) its EPU projects was imprudent, and is causing FPL to incur cost levels that potentially will exceed the cost of FPL's alternative, "no EPU" generation portfolio. OPC asks the Commission to find that the "fast track" decision was imprudent, and to take all measures needed to protect customers in the event the costs of the EPU projects exceed the level that FPL would have spent had it elected to meet

its requirements for capacity with normal planning, design engineering, bidding, and construction procedures and non-nuclear sources of capacity.

Related to the imprudent “fast track” decision is the methodology that FPL has chosen to measure the long term feasibility of its EPU projects. FPL employs a comparison of the present value of revenue requirements of a generation portfolio that assumes the presence of the EPU projects with the corresponding present value of revenue requirements associated with the generation portfolio it would build in the absence of the EPU projects. FPL’s methodology is flawed for two reasons. First, FPL excludes amounts it has already spent from the feasibility calculation. As OPC’s experts will demonstrate, the exclusion of “sunk costs” is acceptable in circumstances in which the ultimate project cost is known and relatively stable; however, the practice of ignoring costs incurred to date distorts the estimate of cost-effectiveness when the ultimate cost is a moving (and rapidly increasing) target, as the costs of FPL’s EPU projects have become. Secondly, FPL imprudently chose not to calculate the maximum cost per installed kW of additional nuclear capacity that it could incur and remain cost-effective for customers relative to its best non-EPU alternative (the “breakeven calculation”). The breakeven calculation is needed to provide an “early warning system” to alert project managers that the EPU uprate project is nearing the point at which it would no longer be cost-effective for customers. Given the complexity and uncertainty of the EPU projects, the absence of the typical project controls (such as the completion of design engineering prior to the implementation phase and the solicitation of bids with price-assured contracts to assure cost control) and in light of the rapidly increasing estimates of the cost to complete the EPU projects, FPL should have prepared a breakeven analysis at the outset and should be updating it throughout the process. The Commission should require FPL to perform an appropriate breakeven calculation that includes all capital costs, including expenditures to date, immediately and utilize the methodology as the basis for current and future long term feasibility studies.

Further, the breakeven analyses should differentiate between the St. Lucie and Turkey Point activities, so that each distinct plant site uprate project, which has its own set of variables affecting feasibility (costs, megawatt increases, and service lives), can be measured and monitored on a stand-alone basis—and so that informed decisions to continue or not continue

can be made on a plant site-specific basis.

A year ago, the Commission deferred FPL-related issues to the 2011 hearing cycle. At the time of the deferral, documents obtained from FPL in discovery showed that FPL had received an employee complaint letter and had engaged Concentric Energy Advisors to investigate the complaint. Further, in his report on the matter, Concentric Energy Advisors President John Reed criticized FPL for failing to update its May 2009 prefiled testimony at the time of the September 2009 evidentiary hearing to provide the Commission with the then current estimate of the cost of completing FPL's EPU projects. At the time of the September 2010 hearing, FPL disputed its consultant's finding. Following the deferral, OPC expert Dr. William Jacobs independently examined the circumstances surrounding FPL's decision not to amend its prefiled testimony regarding the estimate of capital costs and FPL's related long term feasibility study. Dr. Jacobs' testimony and exhibits will establish that (1) the decision to not update the May 2009 prefiled testimony was made jointly by FPL's witness and senior FPL management during the August-September 2009 time frame; (2) at the time of the September 2009 evidentiary hearing, EPU project managers had increased their capital cost estimates by some \$300 million in July 2009 and another \$144 million in August 2009; and (3) at the time of the hearing, FPL had not informed its witness on EPU feasibility of the increased July estimate or of a July 2009 feasibility analysis that took the higher estimate into account, and also had not informed its witness who sponsored the May 2009 estimate of capital costs of the August increase in estimate. OPC regards FPL's conscious, deliberate withholding of the best, most current information concerning the estimated cost of the EPU projects as a violation of Commission Rule 25-6.0423, F.A.C., which requires a utility seeking to collect nuclear-related costs in advance of its service date through the nuclear cost recovery clause to inform the Commission of the estimated costs of its project and to incorporate that estimated cost into a long term feasibility study annually. The Commission should find that FPL violated its rule, and should exercise its authority under Section 366.095, F.S. to fashion and impose on FPL a penalty that will communicate its insistence that utilities subject to its regulation—and especially those seeking to take advantage of the extraordinary and favorable (to utilities) ratemaking device of the nuclear cost recovery clause—be forthright, transparent, and current when providing information to the Commission.

PEF

The Citizens believe that in light of the totality of the facts and circumstances in the record of this docket, it is increasingly unlikely that the Levy Nuclear Plant (LNP) will be completed – if at all -- by the 2021/2022 Commercial Operation Date (COD) schedule that the Commission accepted in 2010. According to PEF's publicly stated schedule, PEF will spend approximately \$400 million of the ratepayers' money in 2011-2013. At this point, the Citizens do not contest the Commission's decision to allow the Company to pursue the COL and absent any evidence that the Commission has been misled about the Company's actual plans regarding the COD for the LNP, this decision should not be revisited. However, the Commission should continue to evaluate the totality of circumstances surrounding the likelihood that PEF will actually construct LNP and if so, that it will construct it on the currently advertised schedule. The Citizens urge the Commission to scrutinize the Company's filing and withhold approval of any costs – not already incurred or legally obligated – which are not strictly necessary to achieve receipt of the COL. The totality of circumstances in this case include that: (1) PEF appears to be de-emphasizing the LNP in its staffing decisions; (2) The cost – effective feasibility scenarios evaluated by PEF continue to trend negative; (3) Key enterprise risks (natural gas prices and greenhouse gas legislation) are trending counter to LNP feasibility; (4) The potential prospect of joint owners remains unlikely given the increasing uncertainty that PEF will complete the LNP project or complete it on the advertised schedule; (5) Public support for new nuclear generation has waned in light of events in Japan and elsewhere; and (6) Significantly, in a process that culminated in a high level retreat only two weeks BEFORE the 2010 NCRC hearings, PEF undertook a high level scenario planning process (most of which was withheld from Staff auditors and the OPC through redactions) that identified a 2027/2029 COD for the LNP units. In this process the participants were instructed not to pick a scenario. This approach to the scenario planning process allowed the Company to publicly adhere to the COD date that the Commission relied upon when it approved the Company's revised LNP schedule and the addition of \$400 million. Despite being requested by the Staff Auditors in December 2010, the scenario plan documents were not disclosed or produced to the auditors until June 10, 2011. As a result, the Staff Auditors, having completed the audit in final draft form at the time these documents were produced, were hampered in their ability to fully evaluate the significance of the Company's 2010 scenario planning process. These circumstances call into serious question any further

reliance on the 2021/2022 COD that PEF has publicly provided to the Commission, and continues to provide.

Based upon the foregoing, the Commission should withhold approval for cost recovery from customers of any and all LNP expenditures that are not directly related to achieving the COL. By doing this, the Commission will limit the ratepayers' losses in paying for PEF to achieve nothing but a COL for a staggering \$1 billion cost even if PEF cancels the LNP project after receipt of the COL. The Citizens emphasize that this enormous cost is mostly attributable to PEF's hasty and ill-advised signing of the EPC on December 31, 2008.

As to the CR3 uprate, the Citizens' position is that the Commission should not approve as prudent any costs incurred after the October 2, 2009 discovery of a second delamination in the CR3 containment building¹ following the Company's unnecessary cutting of a hole in the containment building instead of utilizing the available equipment hatch. There is no obligation for the Commission to give final approval for costs that the Company has failed to carry its burden to demonstrate are prudent. Inasmuch as PEF has not demonstrated that costs incurred after the October 2, 2009 delamination were incurred prudently in light of the uncertainties of successfully repairing the containment building, the Commission should not make a final determination of prudence in this docket without all the facts before it to preclude a disallowance based on evidence that may be presented in Docket No 100437-EI.

4. STATEMENT OF FACTUAL ISSUES AND POSITIONS

Issue A: **Should the Commission defer its decision regarding the long-term feasibility of completing the Crystal River Unit 3 (CR3) Extended Power Uprate (EPU) project and the reasonableness of PEF's 2011 and 2012 ongoing construction expenditures, including associated carrying charges?**

OPC: Based on the circumstances of PEF's inability to repair the CR3 containment building before 2014, the information contained in the testimony that PEF filed on

¹ The first delamination was discovered by the Company in 1976.

March 1 and May 2, 2011, is no longer valid to provide a legal basis for customers paying estimated or projected EPU uprate costs for the years 2011 and 2012. Due to the uncertainty of the success of the chosen repair path by PEF, the Commission does not have enough information in the record to make a decision regarding the feasibility of the CR3 uprate project at this time or in this hearing cycle. In light of PEF's having effectively withdrawn its request for recovery of its estimated 2011 and 2012 revenue requirements and the reliance upon this effective withdrawal by the OPC, the OPC objects to any *ad hoc* testimony (i.e. not pre-filed) concerning anything related to the CR3 delamination or costs incurred by PEF after October 2, 2009. In reliance upon statements in Witness Jon Franke's June 13, 2011 deposition as well as in the Motion to Defer, the OPC ceased its efforts to rebut the PEF testimony for these years' costs (notwithstanding that the testimony was no longer supportable based on decisions made by PEF after the filing). Any testimony allowed on the issue will deprive the OPC, not to mention the other Intervenors, of the most fundamental due process rights guaranteed under the provisions of Chapter 120, Florida Statutes, and the Constitutions of Florida and the United States of America.

Failure to grant the Company's unopposed Motion to Defer will leave the Commission with evidence that would be unsworn, unfairly un-rebutted, and supporting a \$15.7 million increase in revenue requirements wholly supported by inaccurate testimony. The Commission should entertain no testimony or evidence on this matter and grant the Company's Motion to Defer.

Company Specific Issues

Florida Power & Light Company's Specific Issues

ISSUE 1: Should any FPL 2010 Nuclear Cost Recovery Clause rate-case type expenses be disallowed from recovery?

OPC: OPC's understanding is that this issue is intended to address the same factual situation that is encompassed by Issue no. 15. As its response to Issue 1, OPC adopts and incorporates by reference its position on Issue No. 15(A-C).

ISSUE 2 (Legal): Do FPL's activities through 2010 related to Turkey Point Units 6 & 7 qualify as "siting, design, licensing, and construction" of a nuclear power plant as contemplated by Section 366.93, F.S.?

OPC: No position.

ISSUE 3: Should the Commission approve what FPL has submitted as its 2010 and 2011 annual detailed analyses of the long-term feasibility of completing the Turkey Point 6 & 7 project, as provided for in Rule 25-6.0423, F.A.C? If not, what action, if any, should the Commission take?

OPC: No position.

ISSUE 3A: Was FPL's 2010 decision to continue pursuing a Combined Operating License from the Nuclear Regulatory Commission for Turkey Point Units 6 & 7 reasonable? If not, what action, if any, should the Commission take?

OPC: No position.

***ISSUE 4: What is the current total estimated all-inclusive cost (including AFUDC and sunk costs) of the proposed Turkey Point Units 6 & 7 nuclear project and is that reasonable?**

OPC: No position.

***ISSUE 5:** What is the current estimated planned commercial operation date of the planned Turkey Point Units 6 & 7 nuclear facility and is that reasonable?

OPC: No position.

ISSUE 6: Should the Commission find that for years 2009 and 2010 FPL's project management, contracting, accounting and cost oversight controls were reasonable and prudent for the Turkey Point Units 6 & 7 project?

OPC: No position.

ISSUE 7: What system and jurisdictional amounts should the Commission approve as FPL's final 2009 and 2010 prudently incurred costs and final true-up amounts for the Turkey Point Units 6 & 7 project?

OPC: No position.

ISSUE 8: What system and jurisdictional amounts should the Commission approve as reasonably estimated 2011 costs and estimated true-up amounts for FPL's Turkey Point Units 6 & 7 project?

OPC: No position.

ISSUE 9: What system and jurisdictional amounts should the Commission approve as reasonably projected 2012 costs for FPL's Turkey Point Units 6 & 7 project?

OPC: No position.

ISSUE 10: Should the Commission approve what FPL has submitted as its 2010 and 2011 annual detailed analyses of the long-term feasibility of completing the Extended Power Uprate project, as provided for in Rule 25-6.0423, F.A.C? If not, what action, if any, should the Commission take?

OPC: No. The Commission should reject the analyses of long-term feasibility of the Extended Power Uprate projects that FPL submitted for the reasons described in OPC's positions on Issues 10A and 10B, which are subparts of this topic that are designed to identify, for appropriate analysis and separate resolution, specific disputes regarding FPL's analyses.

***ISSUE 10A: Should the Commission accept the quantitative methodology that FPL employed to assess the long-term feasibility of the EPU project?**

OPC: No. FPL employed a comparison of the present value of revenue requirements associated with a generation portfolio containing the EPU projects with the revenue requirements of a generation portfolio without the EPU projects, and in the course of the comparison excluded the amounts it had spent as of the date of the comparison. There are two things wrong with FPL's quantitative methodology. First, while it is appropriate to exclude past expenditures ("sunk costs") for a project in which the final cost is known and stable, it is inappropriate to do so in circumstances in which the final cost is increasing nearly as fast as money is being spent. In such circumstances, if the enterprise spends money fast enough, such that an amount adequate to offset increases in the overall cost is excluded in the next feasibility exercise, its feasibility analysis will continue to indicate positive feasibility even in the face of spiraling and ultimately untenable increases in costs. OPC witness Brian Smith will demonstrate that, when amounts expended by FPL to date are taken into account and the total cost of the EPU-containing portfolio is compared to FPL's alternative on an apples-to-apples basis, the EPU projects likely are "under water" (that is, the analysis predicts they are likely to cost more than the alternative generation portfolio).

Secondly, the comparison of the present values of revenue requirements is insufficient to evaluate a project encompassing the extreme degree of complexity and uncertainty of the EPU projects. Just as FPL selected a breakeven analysis to address the uncertainty of its Turkey Point 6 and 7 projects, it should have prepared a breakeven analysis to evaluate the cost-effectiveness of its EPU project. A breakeven analysis that includes all capital costs would identify the maximum amount that FPL could spend per installed kW of uprate capacity and continue to be less costly than its alternative generation portfolio. In the context of a highly complex project, and especially in view of FPL's decision to abandon normal construction procedures that would have identified and disciplined costs in favor of a "fast track" approach adopted to meet a targeted in-service date, FPL's omission of a breakeven analysis is imprudent. The Commission should mandate one now.

***ISSUE 10B: Should the Commission require FPL to perform separate long-term feasibility analyses for the Turkey Point and St. Lucie uprate activities?**

OPC: Yes. The economic feasibility of an EPU project, which entails high initial capital costs, is dependent on the ability of the expanded unit to generate additional fuel savings during its service life sufficient to offset those capital costs and provide net savings to customers. Said differently, the cost-effectiveness to customers is a function of the interplay of the megawatts of capacity added to an existing unit, the capital costs incurred to obtain the additional capacity, and the remaining service years during which the expanded facility will continue to operate (and generate fuel savings). The St. Lucie and Turkey Point plant sites are geographically separate. The generating units are physically distinct. The uprate activities differ with respect to capital costs, megawatt increases, and, perhaps most importantly, remaining plant life: Together, the two St. Lucie nuclear units have 14 more "unit-years" of operation left before their licenses will expire than the two Turkey Point nuclear units. Clearly, these are separate projects having

separate parameters of cost-effectiveness. Equally clearly, the Turkey Point project, with higher projected capital costs and a significantly shorter operational life within which to overcome those higher capital costs with lower fuel costs, has a greater “burden” to overcome to demonstrate economic feasibility. Especially as costs have escalated significantly beyond the amounts told to the Commission in 2007, FPL should not be permitted to blur the cost-effectiveness of these separate undertakings by consolidating them into a single cost-effectiveness calculation. Separate calculations will demonstrate whether the St. Lucie project has been “carrying” the higher-costing, shorter-term Turkey Point project and will measure whether each is cost-effective. The Commission should require FPL to perform separate breakeven calculations for the St. Lucie and Turkey Point EPU activities immediately, so that the cost-effectiveness of each can be assessed and decisions to continue or not continue can be made on a stand-alone basis.

ISSUE 11: Should the Commission find that for the years 2009 and 2010 FPL’s project management, contracting, accounting and cost oversight controls were reasonable and prudent for the Extended Power Uprate project?

OPC: No. The decision to forgo (as a result of “fast tracking”) the protections inherent in the normal processes, procedures, and sequences of design engineering, bidding, and construction; the omission of a breakeven calculation; and the practice of rolling separate undertakings having individual cost-effectiveness considerations into a single feasibility study are examples of areas in which FPL was deficient. As further statements of its position on Issue 11, OPC adopts and incorporates by reference its positions on Issues 10A, 10B, 16, 17, and 18.

ISSUE 12: What system and jurisdictional amounts should the Commission approve as FPL’s final 2009 and 2010 prudently incurred costs and final true-up amounts for the Extended Power Uprate project?

OPC: The Commission should find that FPL was imprudent when it decided to forgo the protections against excessive costs inherent in the normal processes, procedures, and sequences of design engineering, bidding, and construction and instead “fast track” the EPU projects to meet an otherwise unattainable in-service date. The costs subject to disallowance as a consequence of FPL’s imprudence should be measured on the basis of a breakeven analysis performed at the time the full costs of the EPU projects are known, as described in OPC’s position on Issue 18.

ISSUE 13: What system and jurisdictional amounts should the Commission approve as reasonably estimated 2011 costs and estimated true-up amounts for FPL’s Extended Power Uprate project?

OPC: OPC takes no position, except to note that any amounts approved as reasonably estimated 2011 costs and estimated true-ups should be subject to the determination described in OPC’s position on Issue 18.

ISSUE 14: What system and jurisdictional amounts should the Commission approve as reasonably projected 2012 costs for FPL’s Extended Power Uprate project?

OPC: OPC expresses no position, except to note that any amounts approved as reasonably projected 2012 costs for FPL’s Extended Power Uprate projects should be subject to the determination described in OPC’s position on Issue 18.

ISSUE 15A: Did FPL willfully withhold information concerning the estimated capital costs of its EPU uprate projects and its related long-term study of the feasibility of the EPU uprates that is required by rule 25-6.0423, F.A.C., and that the Commission needed to make an informed decision at the time of the September 2009 hearing in Docket No. 090009-EI?

OPC: Yes. The evidence will show that, following the submission of FPL's prefiled testimony (including its estimate of capital costs and the long-term feasibility study that incorporated this estimate as a principal input) in May 2009, project managers increased their estimates of the cost to complete the EPU projects by some \$300 million in July 2009 and another \$144 million in August 2009. While FPL claims the higher figures were unvetted, the evidence will also show that the revised estimates had matured to the point that they took into account reductions that had been negotiated with the EPC contractor and also anticipated reductions in the scope of the EPU project. Despite the fact that project managers no longer regarded the May 2009 figures as current, and had even performed a revised feasibility analysis that incorporated updated information regarding both megawatt increases and estimates of capital costs (which analysis showed materially lower cost-effectiveness than the May 2009 study), FPL made no change to its May 2009 testimony prior to or during the September 9, 2009, evidentiary hearing, at which time FPL's witness on estimated capital costs adopted his prefiled testimony without change. No questions of corporate miscommunication or of a witness acting contrary to the directive of senior management exist. To the contrary, during the July-August time frame, FPL's witness on capital costs and FPL's senior management jointly made a conscious, deliberate decision to not update the May 2009 testimony. Further, at the time of the September hearing, FPL had not informed its witness on long-term feasibility of the EPU projects of the July 2009 revised feasibility analysis, and had not informed him or FPL's witness on capital costs (who had been assigned to a different job as of the end of July) that the uprate team had increased the estimate of capital costs again in August 2009. OPC submits these actions, or, more precisely, inactions, constitute a willful decision to withhold information from the Commission that it needed to perform its oversight and regulatory functions on an informed basis.

ISSUE 15B: If the answer is yes, does the Commission possess statutory and regulatory

authority with which to address FPL's withholding of information?

OPC: Yes. Section 366.095, F.S., empowers the Commission to impose a fine of not more than \$5,000 per day for each day that a violation continues on a regulated utility that refuses to comply with or willfully violates the requirements of a Commission rule or Commission order. In that regard, OPC notes that FPL failed to inform the Commission of the then current information during the presentation of September 9, 2009, and did not update its estimate of capital costs until May 3, 2010—a period of some 236 days. Commission Rule 25-6.0423(8)(f), F.A.C., requires a utility to submit annually an estimate of capital costs, revised as necessary to reflect changes from the amount presented during the proceeding on the “determination of need” for the project. Additionally, Rule 25-6.0423(5)(c)(5) requires the utility to submit annually a study of the long term feasibility of the project for which it seeks authority to collect costs. The utility meets these requirements officially when it sponsors the information during the evidentiary hearing that the Commission conducts in the proceeding on the nuclear cost recovery clause each year. If these provisions have any meaning at all, they require the utility to provide the best, most current information available at the time the utility presents it during the hearing. FPL deliberately did not do so.

Issue 15C: In light of the determinations in Issues 15A and 15B, what action, if any, should the Commission take?

OPC: Pursuant to Section 366.095, F.S., the Commission has authority under the circumstances to impose a fine of up to \$1,180,000 (236 days X \$5,000 per day) for FPL's violation of Rule 25-6.0423, F.A.C. OPC urges the Commission to exercise its discretion and authority in a way that will communicate its insistence that utilities subject to its jurisdiction be forthright and transparent in their dealings with the Commission.

***Issue 16: Was it prudent for FPL to undertake the EPU projects at Turkey Point and St. Lucie on a “fast track” basis?**

OPC: No. The term “fast track” is a term of art. It has a special meaning—one that goes beyond the notion of expediting or accelerating a schedule while adhering to normal and conventional project management procedures and tools, which include the full sequence of design engineering, followed by bidding and contract formation, followed by construction and implementation. These steps, followed in sequence (even if those steps are expedited), provide protection from unanticipated and uncontrolled increases in costs. “Fast tracking” involves instead a decision to sacrifice the normal controls and sequences, including the completion of design engineering and the issuance of requests for binding bids based on price, and proceeding on a “time and materials”-only basis (because contractors will not accept the risk of set prices when proceeding in the absence of design specifications) so as to meet an in-service date that could not otherwise be met using the normal processes and sequences. “Fast tracking” involves conscious risk-taking, and the degree of risk increases with the complexity and uncertainty that the project presents. The EPU projects are hugely complex, and from the outset have involved massive uncertainty. FPL agrees that cost certainty increases as the process of design engineering progresses. FPL’s decision to “fast track” (such that processes, including design engineering, proceed in parallel instead of the normal sequence, in which design work is completed prior to implementation), has led to a situation in which estimates of the cost of EPU projects have increased from \$1.45 billion to the current \$2.07 billion (not including AFUDC or transmission), and design engineering of the EPU projects presently is only approximately 50% complete. OPC expert William Jacobs, who holds a Ph.D. in nuclear engineering and has 40 years of experience in the nuclear industry, will demonstrate that the decision to “fast track” the EPU projects was imprudent; that it was made when FPL had no clear grasp of the costs of the project; and that FPL continues to experience the consequences, in terms of higher costs, of its imprudent decision.

***Issue 17: Was it prudent for FPL to undertake the EPU projects at Turkey Point and St. Lucie in the absence of a break-even calculation?**

OPC: No. Given the degree of uncertainty that FPL faced when considering its EPU projects, FPL should have performed a break-even analysis to quantify the maximum amount it could spend on the EPU project per installed kW and continue to remain cost-effective for customers. The decision to undertake the EPU projects on a “fast track” basis was imprudent in and of itself; the imprudence was exacerbated by the decision not to quantify the “breakeven” amount per kW. Further, the break-even analysis was and remains a better methodology for measuring the long term feasibility of the EPU projects on a continuing basis.

***Issue 18: If the Commission finds FPL was imprudent in Issues 16 or 17, what action can and should the Commission take?**

OPC: While the Florida Legislature intended to provide regulated utilities an incentive to add nuclear generating capacity to their systems, it did not write a blank check. The Florida Legislature entrusted the role of protecting customers to the Commission by providing that only prudently incurred costs be recovered through the Commission’s cost recovery mechanism. Section 366.93(2), F.S.; Section 403.519(4)(e), F.S. In exercising that statutory role, the Commission must not lose sight of the forest by focusing on individual trees. The imprudence of FPL’s decision to fast track the EPU projects is apparent now; the consequences of that imprudence, in the form of those certain costs that exceed those FPL would have incurred had it built a system without the EPU projects and with normal sequences and procedures, can be measured only when the full costs of each can be measured on a “breakeven” basis. The Commission should enter its finding of imprudence now, and reserve its ability to disallow any costs of EPU projects that exceed the “breakeven” amount at the time the results of the final such comparison are known.

Issue 19: What is the total jurisdictional amount to be included in establishing FPL's 2012 Capacity Cost Recovery Clause factor?

OPC: No position, except that OPC notes the amount should be subject to the mechanism for potential disallowance that OPC advocates in its position on Issue 18.

Company Specific Issues

Progress Energy Florida, Inc

ISSUE 20: Should the Commission approve what PEF has submitted as its 2011 annual detailed analysis of the long-term feasibility of completing the Levy Units 1 & 2 project, as provided for in Rule 25-6.0423, F.A.C.? If not, what action, if any, should the Commission take?

OPC: No. There is insufficient evidence to support PEF's analysis of feasibility because the two key enterprise risks are trending against the cost effectiveness of the LNP project and there is substantial doubt that the LNP project will meet the 2021/2022 COD assumed in the feasibility analysis submitted by PEF. It appears that for the Commission to truly evaluate PEF's feasibility analysis, PEF would need to provide a feasibility analysis based upon a COD of 2027/2029 – some nineteen years after the need was determined by the Commission.

***ISSUE 21: What is the total estimated all-inclusive cost (including AFUDC and sunk costs) of the proposed Levy Units 1 & 2 nuclear project and is this reasonable?**

OPC: The total estimated all-inclusive cost of the LNP is between \$22 and \$25 billion dollars based on an increasingly unlikely COD of 2021/2022. This estimated cost is not reasonable and likely exceeds the cost of other alternate generation sources especially if the COD is 2027/2029, in which case the estimated cost would likely

be substantially greater due to escalation.

***ISSUE 22:** What is the estimated planned commercial operation date of the planned Levy Units 1 & 2 nuclear facility and is this reasonable?

OPC: Evidence indicates that PEF is actively planning for a COD of 2029/2029. If this is in fact the most likely COD, then it is unreasonable to continue to allow advanced cost recovery even under the “demonstration of intent” standard set out in Order No. PSC-11-0095-FOF-EI.

ISSUE 23: Do PEF’s activities to date 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.? (All parties agreed to this issue)

OPC: At this time it does not appear by the totality of circumstances that PEF is demonstrating the requisite intent to construct the LNP project as contemplated by Section 366.093, F.S. and Order No. PSC-11-0095-FOF-EI. PEF has not met its burden of demonstrating such an intent in light of the facts and circumstances contained in the testimony of Dr. William Jacobs and especially in the light of the August 2010 scenario planning exercise that produced a 2027/2029 COD for the LNP units 1 & 2, respectively. The scenario planning process calls into question the PEF-proffered CODs of 2021/2022. (Jacobs)

ISSUE 24: Should the Commission find that for the year 2010, PEF’s project management contracting, accounting and cost oversight controls were reasonable and prudent for the Levy Units 1 and 2 project? If not, what action, if any, should the Commission take?

OPC: No position.

ISSUE 25: What system and jurisdictional amounts should the Commission approve as PEF's final 2010 prudently incurred costs and final true-up amounts for the Levy Units 1 & 2 project?

OPC: No position.

***ISSUE 26:** Should the Commission approve for recovery in 2012 any estimated 2011 and 2012 cost not necessary for receipt of the Combined License (COL) for Levy Units 1 & 2? If not, what action can and should the Commission take with respect to these costs?

OPC: No. Cost recovery should not be allowed for any costs not demonstrated by PEF as being necessary for achieving the only COL. The increasing uncertainty surrounding the LNP project requires that customers not be saddled with transmission related costs, Full Notice To Proceed or (FNTP) negotiation costs, or any other non-COL achievement costs for which the Company has not already legally obligated itself. (Jacobs)

ISSUE 27: What system and jurisdictional amounts should the Commission approve as reasonable actual/estimated 2011 costs and estimated true-up amounts for PEF's Levy Units 1 & 2 project?

OPC: No position at this time, pending additional discovery. The Commission should approve only those actual/estimated 2011 costs and estimated true-up amounts that PEF demonstrated is necessary for achieving the COL. All other amounts should be denied. (Jacobs)

ISSUE 28: What system and jurisdictional amounts should the Commission approve as reasonably projected 2012 costs for PEF's Levy Units 1 & 2 project?

OPC: No position at this time, pending additional discovery. The Commission should approve only those projected 2012 costs that PEF demonstrates are necessary for achieving the COL. All other amounts should be denied.

ISSUE 29: Should the Commission approve what PEF has submitted as its 2011 annual detailed analysis of the long-term feasibility of completing the Crystal River Unit 3 Uprate project, as provided for in Rule 25-6.0423, F.A.C? If not, what action, if any, should the Commission take?

OPC: No. The Commission should grant PEF's Motion to Defer, and defer consideration of this issue until an appropriate NCRC hearing cycle.

***ISSUE 30:** Should the Commission approve as prudent any costs incurred between October 2, 2009 and December 31, 2010 for the Crystal River Unit 3 uprate project?

OPC: No. Due to the pending prudence determination in Docket No. 100437-EI related to the cause of the second delamination event, no costs should be determined as prudent. (Jacobs)

ISSUE 31: For the years 2009 and 2010, should the Commission find PEF reasonably and prudently managed its Crystal River Unit 3 Uprate license amendment request? If not, what dollar impact did these activities have on 2009 and 2010 incurred costs?

OPC: No. The Commission should disallow the (inexplicably confidential) multi-million dollar number contained in bullet 5 on page 1 of the July 2011 Staff Audit Report. This amount should be refunded to the customers who over-paid for PEF's mismanagement of the CR3 Uprate LAR.

ISSUE 32: Should the Commission find that for 2010, PEF's project management, contracting, accounting and cost oversight controls were reasonable and prudent for the Crystal River Unit 3 Uprate project? If not, what action, if any, should the Commission take?

OPC: No position. Inasmuch as these decisions will not be reviewed by the

Commission in Docket No. 100437-EI, no position. Otherwise, the OPC requests that a decision on these costs be deferred until after the Commission's decision in Docket No. 100437-EI.

ISSUE 33: What system and jurisdictional amounts should the Commission approve as PEF's 2009 and 2010 prudently incurred costs for the Crystal River Unit 3 Uprate project?

OPC: Zero. Due to the pending prudence determination in Docket No. 100437-EI, the Commission should refrain from approving as prudent any of these costs. (Jacobs)

ISSUE 34: What system and jurisdictional amounts should the Commission approve as reasonable actual/estimated 2011 costs and estimated true-up amounts for PEF's Crystal River Unit 3 Uprate project?

OPC: Zero. Due to the pending prudence determination in Docket No. 100437-EI and due to the fact that PEF has effectively suspended its uprate pending the outcome of its repair decision, the Commission should refrain from approving as prudent any of these costs. See also OPC position on Issue A.

ISSUE 35: What system and jurisdictional amounts should the Commission approve as reasonably projected 2012 costs for PEF's Crystal River Unit 3 Uprate project?

OPC: Zero. Due to the pending prudence determination in Docket No. 100437-EI and due to the fact that PEF has effectively suspended its uprate pending the outcome of its repair decision, the Commission should refrain from approving as prudent any of these costs. See also OPC position on Issue A.

ISSUE 36: What amount from the deferred balance of the Rate Management Plan approved in Order No. PSC-09-0783-FOF-EI should the Commission approve for recovery in 2012?

OPC: No more than \$60 million. (Jacobs)

ISSUE 37: What is the total jurisdictional amount to be included in establishing PEF's 2012 Capacity Cost Recovery Clause factor?

OPC: Only those costs which PEF has affirmatively shown are absolutely necessary for receipt of the COL for the LNP and no more than \$60 million from the Rate Management Plan should be included. No other LNP and CR3 Uprate costs should be included in PEF's 2012 Capacity Cost Recovery Clause factor. Therefore, the amount requested by PEF should be reduced accordingly. (Jacobs)

5. STIPULATED ISSUES:

None.

6. PENDING MOTIONS:

The OPC may seek a determination of confidentiality as to the amount at issue in Issue 31. Additionally the OPC may seek the Commission to Compel that PEF produce completely un-redacted copies of the 2010 scenario planning presentations (See 11NC-OPCPOD-5-29-000001-000115).

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

None.

8. OBJECTIONS TO QUALIFICATION OF WITNESSES AS AN EXPERT:

None at this time.

9. STATEMENT OF COMPLIANCE WITH ORDER ESTABLISHING PROCEDURE:

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

Dated this 25th day of July, 2011

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and foregoing **PREHEARING STATEMENT OF THE OFFICE OF PUBLIC COUNSEL** has been furnished by electronic mail and U.S. Mail

on this 25th day of July, 2011, to the following:

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