State of Florida

# Public Service Commission

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TALLAHASSEE, FLORIDA 32399-0850

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| **DATE:** | February 17, 2012 |
| **TO:** | Ann Cole, Commission Clerk, Office of Commission Clerk |
| **FROM:** | Lisa Bennett, Senior Attorney, Office of the General Counsel LCB |
| **RE:** | Docket Number 120022-EI - Petition for limited proceeding to approve stipulation and settlement agreement by Progress Energy Florida, Inc. |

Attached is the power point presentation which staff intends to present to the Commission on Monday afternoon in Docket No. 120022-EI. Please place the power point presentation in the docket file.

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Attachment

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FPSC-COMMISSION CLERK

# Progress Energy Florida, Inc.
# Docket No. 120022-EI
# Proposed Stipulation and Settlement Agreement
# Between PEF, OPC, FIPUG, FRF, White Springs, and FEA

## Staff Overview

February 20, 2012

# General Information

1) Stipulation and Settlement Agreement was filed January 20, 2012.
2) The Parties acknowledge there are disputed issues in the dockets addressed in the petition, but believe the stipulation is in the best interest of the Parties they represent, and the public. (pages 1-2)
3) The settlement will become effective upon approval by final Commission vote and will continue through the last billing cycle in December 2016, except for the NCRC portion for Levy which remains in place through December 31, 2017. (s. 23)
4) The provisions in the Agreement are contingent on approval of the Agreement in its entirety by the Commission. (s. 22)
5) Parties to the Settlement are: Progress Energy Florida, Inc., The Office of the Public Counsel, The Florida Industrial Users Power Group, The Florida Retail Federation, White Springs Agricultural Chemicals, Inc., and the Federal Executive Agencies. (page 1)
6) The dockets potentially impacted by this Agreement include: Examination of the outage and replacement fuel/power costs for CR3 (100437-EI); PEF's Nuclear Decommissioning Cost Study (100461-EI); Fuel and Purchased Power Cost Recovery Clause (120001-EI); Environmental Cost Recovery (120007-EI); Nuclear Cost Recovery Clause (120009-EI); and PEF's Stipulation and Settlement Agreement (120022-EI).

# Summary of the Agreement

## Levy Nuclear Plant (LNP) Sections 3. - 6. – Accounting-Related Issues

◆The LNP portion of the Nuclear Cost Recovery Factor, beginning the first billing cycle in January 2013, will be \$3.45/1,000 kWh for a residential customer. This rate will be in effect for 5 years. (s. 4)

◆The factor is designed to recover \$350 million over a 5-year period. PEF will submit a final true-up of its costs. (s. 3)

◆Effective with the first billing cycle in January 2013, the annual retail revenue requirement associated with the carrying costs on the deferred tax asset of approximately \$20.8 million will be transferred from the NCRC to base rates.

◆For surveillance purposes:

- The allocated wholesale cost of LNP will be included in rate base as a regulatory asset. The Regulatory Asset must be fully amortized on or before December 31, 2016. (s. 6)
- LNP land will be moved to land held for future use (Exh.5).
- These adjustments will not be considered in determining whether PEF can seek a base rate adjustment. (s. 6)

# Summary of the Agreement

## Levy Nuclear Plant (LNP) Sections 3. – 6. – Technical Issues

- The Intervenor Parties do not oppose PEF obtaining a Combined Operation License (COL) from the U.S. Nuclear Regulatory Commission for the Levy Nuclear Project. (s. 3)
- Costs incurred for pursuing the COL for the LNP would continue to be addressed through the Nuclear Cost Recovery Clause (NCRC.) (s. 3)
- PEF is prohibited from filing for any additional LNP nuclear cost recovery before March 1, 2017, unless otherwise agreed to by the Intervenor Parties. The earliest additional LNP costs could begin to be recovered is with the first billing cycle of January 2018. (s. 5)

# Summary of the Agreement

## CR3 Section 7. – Procedural

- Consistent with this agreement, PEF will file a motion to dismiss Phase I and to stay Phases 2 and 3 of Docket No. 100437-EI, <u>In re: Examination of the outage and replacement fuel/power costs associated with the CR3 steam generator replacement project, by Progress Energy Florida, Inc.</u>

- The Parties agree this Agreement makes no determination of fault, prudence or reasonableness related to PEF's actions taken in connection with the steam generator replacement (SGR) program or the repair activities associated with delaminations.

- The Intervenor Parties waive their rights to challenge the prudence of PEF's actions taken during the period from the SGR project inception through the Implementation Date in connection with the SGR project or the repair activities associated with the delaminations, including, but not limited to the actions which resulted in the delaminations of the CR3 containment building in 2009 and 2011.

- Absent evidence of fraud, intentional misrepresentation, or intentional misconduct, Intervenor Parties cannot and will not challenge the prudence of PEF's action on the SGR project or PEF's repair activities from the inception date of the SGR project through the Implementation Date of the Agreement in any judicial proceeding.

# Summary of the Agreement

## CR3 Section 8. – Accounting Issues

- Effective January 1, 2011, all depreciation and other accruals will be suspended and/or reversed until the unit is returned to commercial operation or retired and amortized. (s. 8. a.)
- CR3 will be removed from rate base and the associated revenue requirement will be excluded from base rates effective the first billing cycle of January 1, 2013 and will continue to be excluded from rates until the plant returns to commercial operation. Effective with the removal from customer rates, a carrying charge, equal to 7.44 percent, will accrue until the investment returns to commercial service. (s. 8. a.)
- When CR3 returns to commercial operation, PEF is permitted to increase its base rates for the annual revenue requirement including the carrying charges accrued during the period CR3 was removed from rate base, along with all capitalized delamination repair costs in excess of the cost reimbursed through Nuclear Electric Insurance Limited (NEIL). The revenue requirement calculation for CR3 will be based upon a return on equity of 10.70 percent. The return on equity of 10.70 percent for CR3 does not affect PEF's current return on equity of 10.50 percent which applies to PEF's other rate base components. (s. 8. b.; s. 15.)

# Summary of the Agreement

## CR3 Section 9. a. – Mandatory Refunds through the Fuel Clause

- PEF will refund $288M to its customers through the fuel clause. The $288M will be refunded as follows:
  - $129M will be refunded in 2013 and an additional $129M will be refunded in 2014. ($258 total refunded)
  - The remaining $30M will be refunded solely to the Residential and General Service customers (RSL-1, RSL-2, GS-1, and GS-2). The $30M will be refunded at $10M per year for calendar years 2014, 2015, and 2016. Residential customers will receive 94 percent of the annual refund amount with General Service (non-demand rate schedules) receiving the remaining 6 percent.

# Summary of the Agreement

## CR3 Section 9. b. – Contingency Refunds through the Fuel Clause

◆ If PEF, in good faith, commences containment building repairs by December 31, 2012, PEF will have no obligation to refund or forego any CR3 replacement fuel and purchased power costs in 2015 or 2016.

◆ If PEF does not in good faith commence containment building repairs by December 31, 2012, PEF will be obligated to:

- Refund a pro-rated amount not to exceed $40M towards replacement fuel and purchased power costs if CR3 remains out of service in 2015.
- Refund a pro-rated amount not to exceed $60M towards replacement fuel and purchased power costs if CR3 remains out of service in 2016.

◆ If CR3 is not in service in 2015 (or 2016) PEF will project the amount of the required refunds in its projected Fuel Cost Recovery filings which will serve to reduce the fuel cost recovery factors for the following year. (i.e. If CR3 remains out of service in 2015, the refund will be included in the 2016 fuel factors.)

# Summary of the Agreement

## CR3 Section 9. c. - Replacement Fuel and Purchased Power

- PEF is entitled to recover its prudently incurred fuel and purchased power costs through the Fuel Clause without regard to the absence of CR3 for the period October 1, 2009 through the earlier of December 2016, or the date CR3 commences commercial operation subject to:
  - Reimbursement from NEIL will offset fuel and purchased power costs.
  - Intervenor Parties reserve the right to raise issues regarding the prudence and reasonableness of PEF's fuel and purchased power costs.
  - If CR3 is not in service by December 31, 2016, the Intervenor Parties may contest PEF's right to recover replacement fuel and purchased power costs incurred subsequent to 2016.

# Summary of the Agreement

## CR3 Repair Section 10. - Procedure Between Parties

- PEF will develop a proposed schedule to repair CR3 along with a projection of the total repair costs. PEF will meet with the Intervenor Parties before seeking approval by senior management and Progress Energy's Board of Directors (Board). (s. 10. a. (1))
- Within 20 days after PEF meets with the Intervenors to discuss PEF's proposed schedule and projected repair costs, the Intervenors will provide PEF, in writing, any concerns regarding the repair plan. (s. 10. a. (1))
- PEF is required to address the Intervenors' concerns with PEF's senior management and Board. PEF must be prepared to provide proof that the Board and/or senior management formally addressed the Intervenors Parties' concerns with any rejection of those concerns explained in writing. (s. 10. a. (1))

# Summary of the Agreement

**CR3 Repair Section 10. - Procedure Between Parties**

- PEF's decision to repair CR3, the board-approved amount of repair costs, and the repair schedule is not subject to the Intervenor Parties' approval. (s. 10. a. (1))
- PEF will conduct meetings (at least quarterly) until CR3 commences commercial operations to apprise the Intevenor Parties on all matters related to: the status of the unit; repair of the unit; construction status; design status; estimated schedule; estimated cost; NEIL insurance claims and coverage determinations and disputes; licensing status and issues; and risk identification and mitigation methods. (s. 10. d.)

# Summary of the Agreement

## CR3 Repair Section 10. – Waiver of Rights

- If PEF commences repair of the containment building by December 31, 2012, and proceeds with its announced plan and schedule as approved by the Board, the Intervenor Parties waive their rights to challenge PEF's decision to repair and the repair plan. (s. 10. a. (2))

- The waiver of rights will remain in effect through the earlier of:
  1) the time at which PEF obtains final resolution of PEF's insurance coverage claims for CR3 with NEIL or
  2) December 31, 2013. (s. 10. a. (3))

- After resolution of NEIL insurance claims for CR3, Intervenor Parties may challenge any new actions after that time should PEF decide to continue with repairs after such final coverage resolution and discussion with the Intervenor Parties.

- Intervenor Parties do not waive any rights to challenge PEF's <u>execution</u> of the repair plans and the prudence of PEF's repair costs. (s. 10. a. (2))

- If PEF does not commence CR3 containment building repairs in accordance with the publicly announced plan by December 31, 2012, the Intervenor Parties reserve all rights to challenge any PEF decision to repair CR3 and the prudence of implementing such subsequent repairs. (s. 10. a. (4))

# Summary of the Agreement

## CR3 Repair Section 10. - NEIL Claims

- PEF is required to meet and advise the Intervenor Parties of any potential or final resolution with NEIL. (s. 10. b.)
- Intervenor Parties will notify PEF in writing, within 20 business days following the meeting, identifying any concerns regarding the proposed resolution. (s. 10. b.)
- PEF is required to inform its senior management and the Board of any concerns raised by the Intervenor Parties. (s. 10. b.)
- PEF must show that the concerns of the Intervenor Parties were formally acted upon by the Board and/or senior management. If the Board and/or senior management rejects the Intervenor Parties' concerns, the reason for rejection must be provided to the Intervenor Parties in writing. (s. 10. b.)

# Summary of the Agreement

## CR3 Repair Section 10. - Cost Recovery

- If the final resolution of NEIL claims fails to cover the total cost of repairs required to return CR3 to commercial service, the Parties agree to meet and discuss how best to address the deficiency. If resolution cannot be reached, the Parties agree to present the issue to the Commission for resolution. (s. 10. c.)
- Intervenor Parties do not waive any rights to challenge any potential double recovery of CR3 O&M costs that are shown to have been capitalized as part of the CR3 repair. (s. 10. a. (2))
- In the event repair costs exceed the Board's initially approved cost estimate by up to $400M, such costs shall be shared 50-50 between PEF's shareholders and PEF's customers. (s. 10. e.)
- In the event repair cost exceed the Board's initially approved cost estimated in excess of $400M, Parties will meet to discuss the appropriate treatment of the overage. (s. 10. e.)

# Summary of the Agreement

## CR3 Repair Section 11. - CR3 Retirement

- The Parties acknowledge that PEF has the right to decommission CR3 if it determines that it is prudent to do so. (s. 11. a.)
- If PEF decides to decommission CR3, all NEIL proceeds will be applied first to offset the customers' share of replacement fuel costs incurred after December 31, 2012, with any remaining proceeds applied to any unrecovered CR3-related investments. (s. 11. a.)
- If PEF decides to retire CR3, it is authorized to establish a regulatory asset associated with the revenue requirements of CR3. The regulatory asset will accrue AFUDC based on 70 percent of PEF's approved AFUDC rate. (s. 11. b.)
- The Intervenor Parties retain their right to contest the calculation of the deferred regulatory asset. (s. 11. b.)
- PEF will not seek an increase in rates to recover the revenue requirement associated with the regulatory assets or liabilities prior to the first billing cycle in January 2017. (s. 11. b.)

# Summary of the Agreement

**CR3 Uprate Section 12. - NCRC Treatment**

- PEF is entitled to recover the carrying costs and other eligible CR3 Uprate costs through the Nuclear Cost Recovery Clause.
- However, PEF is prohibited from petitioning for in-service cost recovery related to any uprate of CR3 prior to nine months following the commencement of commercial operation of CR3.
- PEF shall use deferral accounting until cost recovery becomes effective and all carrying costs will continue to be recovered through NCRC until the time base rates are increased. Concurrent with the time base rates are increased, recovery through the NCRC will cease, except for true-ups of prior costs.

# Summary of the Agreement

## Base Rate Matters Sections 13. – Base Rate Increase and Freeze

- PEF is entitled to increase base rates by $150 million (retail) in annual revenue requirements. The increase will be effective with the first billing cycle in January 2013.
- Base rates will be increased by a uniform percentage applied to the demand and energy charges.
- Subsequent to the January 2013 increase, PEF will freeze its base rates through the last billing cycle of January 2016 (except as provided in the Agreement.)

# Summary of the Agreement

**Base Rate Matters Section 14. – Environmental Cost Recovery**

- PEF is permitted to remove the capital assets installed and in service on the Crystal River Units 4&5 to comply with the Federal Clean Air Interstate Rule (CAIR) from the Environmental Cost Recovery Clause (ECRC) and transfer those capital assets to base rate in an amount that equaling the annual retail revenue requirements of the assets projected to be in-service as of December 31, 2013.
- Based rates will be increased by a uniform percentage applied to the demand and energy charges.
- The transfer will be effective with the first billing cycle of January 2014.

# Summary of the Agreement

## Base Rate Matters Section 15. – Return on Equity and AFUDC

- PEF's return on equity will be 10.5 percent with a range of +/- 100 basis points. This return on equity will be applicable for purposes of addressing earnings levels, surveillance, and cost recovery clauses.
- As addressed on Slide 5, if CR3 returns to commercial service, PEF may increase its rates for the revenue requirement associated with CR3 investment. The revenue requirement calculation will be based on a return on equity of 10.7 percent, +/- 100 basis points. The 10.7 percent return on equity applies only to CR3-related investment.
- PEF's applicable AFUDC rate will be 7.44 percent.
- In the month following CR3's return to commercial service, the AFUDC rate will be 7.53 percent.

# Summary of the Agreement

## Other Matters Section 16. – Deferred Taxes & Equity Ratio

- During the course of the agreement, PEF is entitled to accelerate in full or in part the amortization of the regulatory assets for FAS 109 Deferred Tax Benefits Previously Flowed through, Unamortized Loss on Reacquired Debt, 2009 Pension Regulatory Asset, and Interest on Income Tax Deficiency.
- PEF will be permitted to make a specific adjustment to its common equity balance and rate base working capital balance which reflects the imputation of off balance sheet obligations related to future capacity payments to qualifying facilities and other entities under long-term purchase power agreements.
- The imputation adjustment shall not be considered for purposes of calculating interest rates or determining whether PEF can seek a base rate increase.

# Summary of the Agreement

**Other Matters Section 18. – Depreciation**

- PEF will have the discretion to record a retail jurisdictional annual credit to depreciation expense, with any reduction in depreciation expense recorded as a cost of removal regulatory asset pursuant to a FERC accounting order received by PEF in 2011.

- Reduction to depreciation expense will be limited to:

  1) Any remaining balance of the cost of removal reserve, throughout the term of the agreement.

  2) An amount that prevents PEF from exceeding the high point of the applicable ROE range (11.5 percent or 11.7 percent) as provided for in the Agreement.

# Summary of the Agreement

**Other Matters Section 18. – Depreciation**

- The Cost of Removal Regulatory Asset will be recovered in the Company's next base rate proceeding or upon completion and approval of the Company's next depreciation study, whichever comes first.
- PEF agrees to file a Depreciation Study, Fossil Dismantlement Study and a Nuclear Decommissioning Study on or before July 31, 2017. The studies currently due to be filed in 2013 will not be filed.

# Summary of the Agreement

## Other Matters Sections 19. & 20. – Rates and Charges

- Intervenor Parties will neither seek nor support a reduction in PEF's base rate and charges prior to the first billing cycle of January 2017, unless the reduction is requested by PEF or if PEF exceeds 11.5 percent ROE (11.7 ROE if CR3 is returned to commercial operation) as reported on a commission adjusted or pro-forma basis on a PEF monthly surveillance report filed during the Term of the Agreement.

- If PEF's retail earnings fall below a 9.5 percent ROE (9.7 if CR3 is returned to commercial operation) as reported on a Commission adjusted or pro-forma basis on a PEF monthly earning surveillance report filed during the Term of the Agreement, PEF may petition the Commission for base rate relief. However, the request will be limited to a 10.5 percent ROE (10.7 percent ROE if CR3 is returned to commercial operation.)

# Summary of the Agreement

## Other Matters Section 21. – Cost Recovery & Storm Damage

- PEF is not precluded from requesting Commission approval for costs typically recovered through cost recovery clauses or cost the Legislature or Commission determines are clause recoverable.
- PEF is not precluded from recovery storm damage costs caused by a tropical system named by the Hurricane Center. Cost recovery of storm damage costs will not be subject to an earnings test.
- If approved by the Commission, PEF can recover storm damage costs from its customers, on an interim basis, sixty days following the filing of a cost recovery petition.
- Storm costs will be recovered over a 12-month recovery period and subject to true-up.
- PEF may recover all storm related costs pursuant to Rule 25-6.0143, F.A.C. and amounts necessary to replenish the storm reserve to the level as of the date of the Agreement.

# Estimated Impact on 1,000 kWh Residential Bill in 2013

| | 2012 | Bill Impact | 2013 | Explanation |
|---|---|---|---|---|
| Customer Charge | 8.76 | | 8.76 | |
| Energy Charge | 39.82 | 5.27 | 45.09 | $150M base rate increase; move $20.8M from NCRC to base rates |
| Fuel Cost Recovery | 48.60 | -3.44 | 45.16 | $129M fuel refund in 2013 |
| Energy Conservation Cost Recovery | 2.88 | 0.31 | 3.19 | Increase in interruptible and curtailable credits |
| Environmental Cost Recovery | 5.45 | | 5.45 | |
| Capacity Cost Recovery excl. Nuclear Costs | 11.74 | | 11.74 | |
| CR 3 Uprate | 0.19 | 1.89 | 2.08 | CR3 Uprate Project |
| Levy Nuclear Project (LNP) | 2.67 | 0.78 | 3.45 | LNP set at $3.45 |
| Gross Receipts Tax | 3.08 | 0.12 | 3.20 | |
| **TOTAL** | **$123.19** | **$4.93** | **$128.12** | |

# Estimated Impact on 1,000 kWh Residential Bill in 2014

| | 2013 | Bill Impact | 2014 | Explanation |
|---|---|---|---|---|
| Customer Charge | 8.76 | | 8.76 | |
| Energy Charge | 45.09 | 4.87 | 49.96 | Move CAIR from ECRC to base rates |
| Fuel Cost Recovery | 45.16 | -0.54 | 44.62 | $129M and $10M fuel refund in 2014 |
| Energy Conservation Cost Recovery | 3.19 | | 3.19 | |
| Environmental Cost Recovery | 5.45 | -4.21 | 1.24 | Move CAIR to base rates |
| Capacity Cost Recovery excl. Nuclear Costs | 11.74 | | 11.74 | |
| CR 3 Uprate | 2.08 | -0.33 | 1.75 | CR3 Uprate Project |
| Levy Nuclear Project (LNP) | 3.45 | | 3.45 | |
| Gross Receipts Tax | 3.20 | | 3.20 | |
| **TOTAL** | **$128.12** | **-$0.21** | **$127.91** | |