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Subject: E-filing (Docket No. 120009-EI)
Attachments: OPC's Reply Brief to PEF's Breif Opposing the Inclusion of Issues 1,2 &3.pdf

Electronic Filing

a. Person responsible for this electronic filing:

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b. Docket No. 120009-EI

In re: Nuclear Cost Recovery Clause.

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

d. There are a total of 5 pages.

e. The document attached for electronic filing is Office OF Public Counsel's Reply Brief in Support of Issues 1, 2, and 3.

Thank you for your attention and cooperation to this request.

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DOCUMENT NUMBER-DATE

05499 AUG 10 2012

FPSC-COMMISSION CLERK

8/10/2012

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In Re: Nuclear Cost Recovery)
Clause.)
_____)

Docket Nos. 120009-EI
Filed: August 10, 2012

OFFICE OF PUBLIC COUNSEL'S REPLY BRIEF TO PROGRESS ENERGY FLORIDA,
INC.'S BRIEF OPPOSING THE INCLUSION OF ISSUES 1, 2, AND 3

Office of Public Counsel (OPC) presents to the Florida Public Service Commission (Commission) its reply brief in support of Issues 1, 2, and 3. On August 6, 2012, OPC filed its prehearing statement in Docket No. 120009-EI in compliance with Order No. PSC-12-0078-PCO-EI, and set forth its positions in support of Issues 1, 2, and 3 timely for consideration and adjudication in the annual Nuclear Cost Recovery Clause ("NCRC") proceeding. On August 6, 2012, Progress Energy Florida, Inc. (PEF) filed its prehearing statement and subsequent brief in opposition to the admittance of proposed Issues 1, 2, and 3 for consideration and adjudication by this Commission in the 2012 NCRC proceeding. OPC's positions and arguments in support of the inclusion of Issues 1, 2, and 3 are more thoroughly discussed in OPC's prehearing statement and incorporated herein by reference, and will again be made at the prehearing conference scheduled in this docket. OPC files this reply brief to counter PEF's brief in opposition to Issues 1, 2, and 3.

In short, OPC agrees with PEF that Issues 1, 2, and 3 touch on both legal and policy issues. We disagree with PEF about whether these issues should be considered and adjudicated by this Commission now in light of the continuing outage of Crystal River Nuclear Unit 3 (CR3). There is a glaring flaw in PEF's legal arguments opposing the inclusion of these issues. PEF's brief in opposition fails to account for or address the undisputed fact that drives the compelling

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reasons why OPC proposed including Issues 2 and 3 (Staff proposed Issue 1 which omits necessary reference to the current status of CR3). The facts or inconvenient truths which PEF's brief sidesteps are these: (1) CR3 has been out of service and has not provided any electricity or value to the PEF's customers since October 2009; (2) CR3 continues to remain out of service and customers are paying millions of dollars in ongoing operations and maintenance costs for an otherwise idle plant; (3) PEF and its parent Duke Energy Corporation, Inc. have yet to reach a final decision to repair CR3 and return it to commercial service; (4) CR3 will continue to remain out of service until at least late 2014 or 2015 once the decision to repair has been implemented; and (5) notwithstanding these facts, PEF is requesting that customers continue to pay now for a very expensive extended power uprate project which may never generate one watt of electricity if CR3 is retired instead of repaired. Based on these compelling facts alone, this Commission should consider and adjudicate each of these issues, reaching the merits thereof. If the facts surrounding the continuing outage of CR3 did not exist or could in good conscience be ignored, then PEF's brief in opposition makes sense. However, to pay no heed to these facts is tantamount to ignoring the elephant in the room.

In light of the foregoing, OPC requests that this Commission consider and adjudicate the following issues on the merits:

ISSUE 1: Does Section 366.93, Florida Statutes, authorize the Commission to disallow recovery of all, or a portion of, the carrying costs prescribed by Section 366.93(2)(b), Florida Statutes?

ISSUE 2: Does the Commission have the authority to disallow recovery of any AFUDC equity on the Crystal River Unit 3 Uprate project in 2012 and 2013 due to the delay caused by the lack of implementation of a final decision to repair or retire

Crystal River Unit 3? If yes, should the Commission exercise this authority and what amount should it disallow, if any?

ISSUE 3: Does the Commission have the authority to defer all determinations of prudence and reasonableness for the Crystal River Unit 3 Uprate project (and, thus, defer cost recovery in 2013) until a final decision to repair or retire has been implemented? If yes, should the Commission exercise this authority?

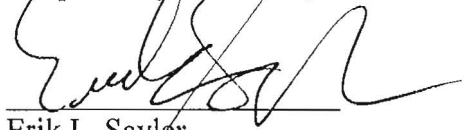
The Commission has the obligation under Chapter 366, F.S., to consider and adjudicate the merits of relevant issues that relate to cost recovery pursuant to Section 366.93, F.S. A statutory mandate cannot be applied in a vacuum. The merits of these three proposed issues, in particular Issues 2 and 3, are ripe for decision now more than ever in the light of the fact that a final decision to repair or retire CR3 has yet to be made or implemented. In 2011, PEF did the right thing for itself and its customers and requested a deferral of the determination of reasonableness as it related to CR3 costs because the uncertainty that surrounded the decision to repair or retire CR3 which had not been made. In 2012, however, PEF would like this Commission to cast a blind eye towards that inconvenient truth and move forward over the objections of the Citizens of the State of Florida with continued CR3 uprate cost recovery. PEF apparently would like the Commission to avoid deciding whether the Commission can and/or should disallow a relatively small amount of dollars contained in the non-debt component of AFUDC for the CR3 uprate *until a final decision to repair or retire has been implemented* (Issue 2) and whether the Commission can and/or should defer consideration of the determinations of prudence and reasonableness for the Crystal River Unit 3 Uprate project *until a final decision to repair or retire has been implemented* (Issue 3). *But for* the failure of PEF to reach a final decision to repair or retire CR3, Issues 2 and 3 would not be ripe for consideration

and adjudication. If asked, OPC believes that staff's proposed Issue 1 misses the point which is being raised and addressed by Issue 2 (the lack of a final repair decision). Further, Issue 1 can be subsumed within Issue 2 because Issue 2 is narrowly tailored to the relevant facts of PEF's current predicament.

In conclusion, if CR3 can be repaired safely, technically, cost-effectively, and economically feasibly, OPC believes that CR3 should be returned to service as quickly as possible so that the promised (and mostly paid for) economic benefit of the extended power uprate will one day be realized for the benefit of PEF's customers. However, until the utility reaches a final decision on the future of CR3, Issues 1, 2, and 3 should be considered and adjudicated.

This abbreviated reply brief does not address Issues 14, 16, 28A or 29A. As for Issues 14 and 16 which are newly disputed and for contested Issues 28A and 29A, OPC believes they are ripe for consideration and adjudication. OPC will set forth its arguments in support of inclusion of all the disputed issues at the prehearing conference scheduled in this docket.

Respectfully submitted,



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CERTIFICATE OF SERVICE
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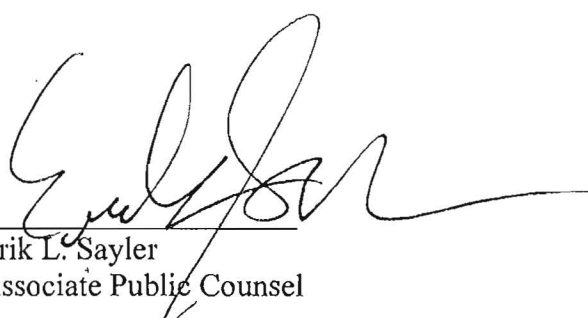
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