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**DOCKET NO. 120001-EI**

**On Behalf of Progress Energy Florida, Inc.**

**Consisting of 9 Pages.**

**The attached document for filing is PEF's  
Post Hearing Brief in the above  
referenced docket.**

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FPSC-COMMISSION CLERK

11/13/2012

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

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In re: Fuel and purchased power cost  
recovery clause with generating  
performance incentive factor.

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Docket No. 120001-EI

Submitted for Filing: November 13, 2012

**Progress Energy Florida, Inc.'s Post-Hearing Brief**

Progress Energy Florida, Inc. ("PEF" or the "Company") hereby submits its Post-Hearing Brief addressing the appropriate amount of projected Nuclear Electric Insurance Limited ("NEIL") replacement power insurance proceeds to include in its 2013 projections for purposes of setting the Company's fuel cost recovery factor.

**I. Introduction**

One issue remains for resolution in this docket: what amount, if any, PEF should include in its 2013 fuel projections to account for possible NEIL insurance proceeds. Consistent with the assumption it made in last year's fuel cost recovery docket, PEF has based its projections on the actual facts it has, not speculation as to what may happen. In last year's fuel docket, some of the Interveners argued that PEF should assume that NEIL would provide coverage assuming two events in 2012 rather than the one event PEF assumed, and the Commission rejected the Interveners' argument. Nothing has changed since last year's fuel proceeding with respect to the facts that PEF has regarding NEIL payments. Accordingly, there is no reasonable basis to change PEF's "one event" assumption in its 2013 projection factors.

**II. Consistent with Last Year's Fuel Proceeding, PEF Based its Assumption for Projected NEIL Insurance Recovery in 2013 on the Best and Most Reasonable Information Available**

The sole remaining issue in this matter concerns the amount of NEIL insurance proceeds PEF has assumed it will receive in 2013 for purposes of setting the 2013 fuel cost recovery factor. The prudence, timing, substance, and pace of the negotiations with NEIL are not at issue in this docket. The ultimate,

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total amount of recovery that PEF should recover from NEIL pursuant to all applicable insurance policies is also not at issue in this proceeding. Despite attempts by some Interveners to improperly expand the scope of this proceeding, these other issues are for determination at another time, in another docket.

To determine how much, if any, to include for potential NEIL insurance recoveries in this year's fuel clause, PEF looked at all available facts. First, in last year's fuel clause proceeding, PEF assumed that it would receive the remainder of coverage under a single event payout from NEIL in 2012, an assumption that was approved by the Commission. See Order Number PSC-11-0579-FOF-EI, page 9 (Dec. 16, 2011). However, PEF did not receive any NEIL payments in 2012, resulting in an under-recovery. (Tr. Pg. 60). NEIL has acknowledged the first event by starting to make payments on that single event.<sup>1</sup> (Tr. Pg. 108). In addition, NEIL has not made a coverage determination on the second delamination. (Id.) Non-binding mediation with NEIL is scheduled for the fourth quarter of 2012. (Tr. Pg. 97). Finally, for accounting purposes, the Company has recorded a "zero" for expected NEIL insurance reimbursements for 2013, because under controlling guidance, it is not "probable" that NEIL will make any payments during 2013. (Tr. Pg. 110). Given all these facts, PEF had two reasonable options with respect to the 2013 fuel cost factor: (1) continue with the previous year's assumption of single event coverage payments in 2013; or (2) assume no payments from NEIL in 2013 and include zero for insurance recovery in the 2013 fuel cost factor. (Tr. Pg. 95). PEF decided to give the benefit of the doubt to its customers and include the single event coverage amount in the 2013 factors. PEF therefore based its coverage assumption on the best available, known information. (Tr. Pg. 95).

Although there has been a second delamination in the building, and PEF has submitted that information to NEIL, NEIL has not made a determination as to how this second delamination will be handled for purposes of insurance recovery. NEIL is investigating the circumstances and PEF continues to work with NEIL so that a proper determination can be made. (Tr. Pg. 117). Some Interveners question this assumption and argue that PEF should assume that NEIL will provide for coverage based on

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<sup>1</sup> PEF notes that, even though NEIL has started making payments, that is not an indication that they have accepted coverage for the event. That claim will be included as part of the overall claim dispute.

two events. The Commission, just like it always does when considering forecasts and projections, should use the best available information it has to determine the most reasonable assumption with respect to NEIL coverage. And that best information shows that, for now, NEIL considers the CR3 outage to be a single event. (Tr. Pg. 95). Indeed, NEIL's 2011 Annual Report, introduced into evidence by an Intervener, supports PEF's assumption of single event coverage, not the two event assumption put forth by Interveners:

*"The Company<sup>2</sup> has made a provision for the initial 2009 delamination damage in its reserves based on an estimate of the loss exposure and information available at this time. . . Due to the size, complexity, and unique aspects of the 2011 delamination damage, the Company has not yet made a determination as to potential coverage, if any, for this additional damage. While significant amounts of information have been exchanged between the Company and the Member, the applicability of policy coverage provisions and exclusions remains an active assessment. Additional discussions and analyses will be required before a specific coverage determination can be made. In the interim, no one outcome has been identified as having a materially greater likelihood of applying based on consideration of information available to date. In addition, the Company has not yet established a timetable for resolution of claims determination process. As such, the Company is currently unable to predict the ultimate outcome of, or reasonably establish a reserve the possible losses or range of losses resulting from, the 2011 delamination damage."* Hrg Exh. 119, p. 46; Tr. Pgs. 79-80 (emphasis added).

The Commission considered this same argument, that two events should be assumed, in last year's docket, and rejected it. The Commission held: "We find that more facts surrounding the first delamination event are 'known' than for the second, and that the Company was reasonable in using the insurance proceeds from the single claims process in building its 2012 projections that incorporate the 'best known information.'" See Order Number PSC-11-0579-FOF-EI, page 9 (Dec. 16, 2011). Like last year, more facts about the first delamination are known than facts for the second delamination. There is no reason to change the Company's assumption with respect to recovery of NEIL insurance proceeds.

Even if the Commission accepted Interveners' argument that PEF should assume "two event" coverage from NEIL, for purposes of setting the 2013 fuel factor, there is no evidence in the record to

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<sup>2</sup> In the NEIL Annual Report, "the Company" refers to NEIL and "Member" refers to Progress Energy Florida.

support the calculation. As Ms. Olivier testified, at this point in time, she does not have the necessary information to calculate with certainty what amount would be due and owing from NEIL for a second delamination. Specifically, PEF does not know the date on which NEIL coverage would begin for the second delamination, nor does it know when the coverage payments for the first delamination would stop in that scenario. (Tr. Pg. 104). It would be speculative to increase the amount assumed in 2013 for two events, because PEF simply does not have all the facts needed to do that calculation. (Tr. Pg. 104).

Based on the exhibits entered into evidence and the arguments made by some interveners during the hearing, PEF anticipates that interveners will make a number of arguments to support their request to increase the amount of NEIL insurance recoveries PEF should include in 2013. Specifically, PEF expects that interveners will argue that NEIL has been delaying consideration of PEF's claim because NEIL is not authorized to do business in Florida and is not registered by the Florida Office of Insurance Regulation. (Hrg. Ex. 123 and 124; Tr. Pgs. 99-102). Intervenors are also likely to point to various provisions in the NEIL insurance policies and argue that a second delamination is covered and therefore the Commission should assume two events when setting the 2013 fuel factors. (Hrg. Ex. 121 and 122) PEF will not respond to the substance of these arguments in this brief, because they relate to issues that are beyond the scope of this proceeding.<sup>3</sup> PEF and the interveners will have an opportunity in another docket to fully litigate all issues regarding the status of the NEIL negotiations, but these matters are irrelevant to the sole remaining issue in the fuel proceeding.

As PEF noted in last year's fuel proceeding, it is possible that NEIL could determine there to be two separate events.<sup>4</sup> At that point PEF can make the appropriate adjustments to its fuel clause filings, pursuant to the usual true-up mechanism it always utilizes in the fuel clause. This is no different from a change in fuel forecasts; the Company always trues up actual prices against projected prices. PEF also

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<sup>3</sup> By not responding to these irrelevant arguments, PEF does not waive its right to fully respond at the appropriate time, when those issues are ripe for consideration in another docket.

<sup>4</sup> PEF is committed to recovering the maximum amount of coverage available to it under the NEIL insurance policies. (Tr. Pgs. 116-117). Including a "one event" coverage assumption for purposes of the fuel proceeding does not change or impact PEF's intent to pursue all available coverage from NEIL.

notes, however, that it is possible that PEF could receive no funds from NEIL in 2013, resulting in an additional under-recovery for fuel bills.

To conclude, there are two reasonable options with respect to the amount of NEIL insurance recovery to assume will be received in 2013. The first reasonable choice is to include zero, consistent with how the Company has treated the issue from an accounting standpoint. The second option, the one that PEF chose, is to continue the assumption for remaining "one event" coverage that PEF assumed in last year's fuel proceeding. Any other option, including the "two event" coverage advocated by the Interveners, is too speculative, and therefore not reasonable for purposes of this fuel clause proceeding.

### III. Statement of Issues and Positions

With respect to those issues which were not stipulated and approved by the Commission, PEF offers the following positions:<sup>5</sup>

**Issue 1D:** What amount, if any, should PEF include in its 2013 projections to account for potential insurance recoveries for Crystal River Unit 3 from Nuclear Electric Insurance Limited?

**PEF Position:** \*Consistent with last year's fuel clause recovery order, PEF should base the amount on known facts. Accordingly, PEF should include the remaining \$327.6 million, which would be due under the NEIL policy assuming one event, in its 2013 projections.\*

**Issue 8:** What are the appropriate fuel adjustment true-up amounts for the period January 2011 through December 2011?

**PEF Position:** \*\$201,362,994 under-recovery.\*

**Issue 9:** What are the appropriate fuel adjustment actual/estimated true-up amounts for the period January 2012 through December 2012?

**PEF Position:** \*\$55,996,082 over-recovery.\*

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<sup>5</sup> The first issue regarding the NEIL insurance assumption is the main issue in dispute. The remaining issues are fall-out issues, such that the resolution of the NEIL issue may impact the dollar figures included in the latter issues.

**Issue 10:** What are the appropriate total fuel adjustment true-up amounts to be collected/refunded from January 2013 to December 2013?

**PEF Position:** \*\$145,366,912 under-recovery.\*

**Issue 11:** What are the appropriate projected total fuel and purchased power cost recovery amounts for the period January 2013 to December 2013?

**PEF Position:** \*\$1,234,709,629\*

**Issue 18:** What are the appropriate projected net fuel and purchased power cost recovery and Generating Performance Incentive amounts to be included in the recovery factor for the period January 2013 to December 2013?

**PEF Position:** \*\$1,382,565,768\*

**Issue 20:** What are the appropriate levelized fuel cost recovery factors for the period January 2013 to December 2013?

**PEF Position:** \*3.698 cents per kWh (adjusted for jurisdictional losses).\*

**Issue 22:** What are the appropriate fuel cost recovery factors for each rate class/delivery voltage level class adjusted for line losses?

**PEF Position:** \*The appropriate factors are those included on page 15 of the pre-hearing order, Order Number PSC-12-0597-PHO-EI.\*

**Issue 27:** What are the appropriate capacity cost recovery true-up amounts for the period January 2011 through December 2011?

**PEF Position:** \*\$4,389,550 under-recovery.\*

**Issue 28:** What are the appropriate capacity cost recovery actual/estimated true-up amounts for the period January 2012 through December 2012?

**PEF Position:** \*\$6,096,072 under-recovery.\*

**Issue 29:** What are the appropriate total capacity cost recovery true-up amounts to be collected/refunded during the period January 2013 through December 2013?

**PEF Position:** \*\$10,485,622 under-recovery.\*

**Issue 30:** What are the appropriate projected total capacity cost recovery amounts for the period January 2013 through December 2013?

**PEF Position:** \*\$385,072,136\*

**Issue 31:** What are the appropriate projected net purchased power capacity cost recovery amounts to be included in the recovery factor for the period January 2013 through December 2013?

**PEF Position:** \*The appropriate projected net purchased power capacity cost recovery amount, excluding nuclear cost recovery, is \$395,842,560. The appropriate nuclear cost recovery amount is that which is approved in Issue 23A.\*

**Issue 33:** What are the appropriate capacity cost recovery factors for the period January 2013 through December 2013?

**PEF Position:** \*The factors submitted in revised Schedule E12-E, column 10, in Exhibit MO-2, Part 3, after the Commission's vote on the appropriate nuclear cost recovery amounts to be included in the Capacity Cost Recovery Clause.\*

WHEREFORE, for all the reasons stated above, PEF respectfully requests that the Commission approve its request for fuel cost recovery, including all fuel costs as calculated assuming "single event" NEIL coverage.

Respectfully submitted this 13<sup>th</sup> day of November, 2012.



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**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished via electronic mail to the following this 13<sup>th</sup> day of November, 2012.

  
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