Eric Fryson

From:	Costello, Jeanne <jcostello@carltonfields.com>
Sent:	Friday, April 19, 2013 4:09 PM
To:	Filings@psc.state.fl.us
Cc:	Gamba, Blaise N.; Charles Rehwinkel; Dianne Triplett; Erik L. Sayler; F. Alvin Taylor; James Brew ; John Burnett; Jon C. Moyle Jr. ; Keino Young; Bernier, Matthew R.; Michael Lawson; Walls, J. Michael; 'Monica Woods'; 'Myndi Qualls'; Paul Lewis Jr. ; Schef Wright ; Lee Eng Tan
Subject:	Electronic Filing Docket 100437-EI
Attachments:	Docket 100437 Progress Energy Brief in Response to Order Granting Joint Motion_1.pdf

Electronic Filing
Docket No. 100437-EI
In re: Examination of the outage and replacement fuel/power costs associated with the CR3 steam generator replacement project, by Progress Energy Florida, Inc.

a. Person responsible for this electronic filing:

James Michael Walls/Blaise N. Gamba
Carlton Fields, P.A.
P.O. Box 3239
Tampa, FL 33601
Telephone: (813) 229-4328
Email: mwalls@carltonfields.com
bgamba@carltonfields.com

b. Document being filed on behalf of Progress Energy Florida, Inc.

c. There are a total of fifty-seven (57) pages.

d. The document attached for electronic filing is: **Progress Energy Florida, Inc.'s Brief in Response to Order Granting Joint Motion of the Parties to Resolve Certain Disputed Case Issues.**

Thank you for your attention to this request.

Jeanne Costello
Legal Admin Assist/Florida Registered Paralegal
Florida Bar No. 256251

4221 W. Boy Scout Blvd., Ste. 1000
Tampa, Florida 33607-5780
Direct: 813.229.4917 | Fax: 813.229.4133
jcostello@carltonfields.com | www.carltonfields.com

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Examination of the outage and replacement fuel/power costs associated with the CR3 steam generator replacement project, by Progress Energy Florida, Inc.	DOCKET NO.: 100437-EI Filed: April 19, 2013

PROGRESS ENERGY FLORIDA, INC.'S BRIEF IN RESPONSE TO ORDER GRANTING JOINT MOTION OF THE PARTIES TO RESOLVE CERTAIN DISPUTED CASE ISSUES

Progress Energy Florida, Inc. ("PEF" or the "Company") submits this brief to the Florida Public Service Commission ("PSC" or the "Commission") in response to Commission Order granting the Joint Motion of the Parties to Resolve Certain Disputed Case Issues. Pursuant to Order No. PSC-13-0155-PCO-EI granting the Joint Motion, the threshold issue that the prehearing officer must determine is: What issues, if any, does the Settlement Agreement, approved by Commission vote on February 22, 2012 and in Order No. PSC-12-0104-FOF-EI, preclude the Commission from determining in this docket? As explained in detail below, the Settlement Agreement resolved all prudence issues in Docket No. 100437-EI through the date of the final Commission vote approving the Settlement. The resolution of these issues was final under controlling Florida law when there was no appeal from the Commission Order approving the Settlement Agreement in Order No. PSC-12-0104-FOF-EI ("Settlement Agreement").

I. SUMMARY OF ARGUMENT.

In Docket No. 120022, PEF and the Intervenor Parties to this docket presented the Settlement Agreement to the Commission with the clear and unambiguous intent to resolve **all** prudence issues in this docket up to the Implementation Date of the Settlement Agreement (February 22, 2012). At that time, the parties had engaged in

almost three years of discovery; had exchanged and reviewed millions of pages of documents; had taken multiple depositions of employees and non-employees in and outside of Florida; and had met for months in advance of the settlement to negotiate it. All parties knew in extensive detail what the facts and issues in this case were, which was the reason they could come before the Commission and offer such a comprehensive settlement on behalf of Florida customers. In exchange for, among other things, refunding hundreds of millions of dollars to customers, PEF and the Intervenor Parties negotiated the resolution of all issues of prudence from the start of the events that gave rise to this Docket all the way through the Implementation Date of the Settlement Agreement. The parties intended and agreed to put past facts behind them and the only events on which the prudence of PEF's actions would be judged were events that would take place in the future. For this reason, the parties agreed to dismissal of "Phase I" of this Docket, which dealt with the prudence of PEF's actions from the start of the Steam Generator Replacement Project ("SGR") that gave rise to all the issues in this case, through the date of the first delamination at Crystal River Unit 3 ("CR3") in October of 2009. The Commission properly recognized this fact too, and once the Settlement Agreement was approved, the Commission granted the agreed-upon motion and dismissed all issues in Phase 1 of this Docket. Despite the fact that the Commission has dismissed this previous "Phase I" of the Docket, the Intervenor Parties now contend (via proposed issues that they have offered in issues identification meetings) that they can somehow challenge the prudence of certain of PEF's actions during this time frame despite the Commission's final order. *See* Attachment A, Proposed Issue OPC 9. One intervenor has even offered an issue that purports to

examine whether it was prudent for PEF to ever contract with the Nuclear Electric Insurance Limited ("NEIL") for insurance in the first instance, an issue that would take the Commission back decades to when CR3 first came online. *See* Attachment A, Proposed Unnumbered Disputed Issue, p. 4. These issues, and the apparent commensurate assertions that the Settlement Agreement does not bar the consideration of them, are meritless and, if approved by the Commission, would abrogate this Commission's longstanding policy favoring the settlement of disputed issues, rendering future settlements of disputed issues unlikely. It also would violate the well recognized principles of administrative finality.

The Intervenor Parties further take the position that PEF's actions with respect to the NEIL claims *for damage and repairs to CR3* that took place *because of the SGR project and the subsequent delaminations* are not "connected with" the SGR project or the damage and repairs to CR3. This apparent claim that PEF's NEIL claims had nothing to do with the SGR project or the damage and repairs to CR3 is an improper attempt to work around the Settlement Agreement that they agreed to and signed, and it must be rejected. The fallacy of such arguments is evident in the rhetorical question: "*What else could PEF's NEIL claims possibly be about if not PEF's actions during the SGR project and the resulting damage and repairs that took place because of it?*" The parties understood this when they negotiated and executed the Settlement Agreement. Indeed, one purpose of finally resolving the issues in this Docket through the Implementation Date was to place PEF in a position to resolve its claims with NEIL.

PEF fully admits that it did not negotiate the resolution of the prudence of actions yet to take place in the future after February 22, 2012, nor could the Commission have

bound itself by approving the prudence of actions yet to take place. Thus, the Commission will be able to review the prudence of PEF's actions from February 23, 2012 up through the date that PEF made the decision to retire the unit and accept a settlement with NEIL. Rather than honoring this clear application of the Settlement Agreement, the Intervenor Parties instead argue that this case cannot be tried until late in 2014 given their attempt to "explore the prudence" of PEF's actions and interactions with NEIL going back decades to when PEF signed the very first insurance policy with NEIL. As set forth in detail below, this argument lacks both factual and legal merit and must be rejected as a matter of law.

II. BACKGROUND.

A. THE CR3 EVENTS AND THE COMMISSION DOCKET TO ADDRESS THEM.

PEF replaced the steam generators at CR3 during the CR3 refueling outage in the fall of 2009. During the SGR project, PEF discovered a delamination, or cracking in the outer layer of concrete, around the construction opening in the CR3 containment building for the SGR project. This delamination led to an extended outage beyond the planned date for the return of CR3 to commercial service following the refueling outage. The prudence of PEF's actions resulting in the extended CR3 outage and necessary replacement power fuel costs for CR3 was an issue during the Commission's 2010 fuel and purchased power cost recovery docket. PEF moved the Commission to create a separate docket to investigate the prudence of PEF's actions concerning the delamination and to review the prudence of PEF's resulting fuel and purchased power replacement costs associated with the extended CR3 outage. The Commission granted PEF's motion and opened Docket No. 100437-EI to address the prudence of PEF's

actions and the resulting CR3 fuel and purchase power replacement costs. The Office of Public Counsel ("OPC"), representing all of PEF's customers, the Florida Retail Federation ("FRF"), the Florida Industrial Power Users Group ("FIPUG"), White Springs Agricultural Chemicals, Inc. ("White Springs"), and the Federal Executive Agencies ("FEA"), representing PEF customer groups or individual customers, all intervened as parties to this docket (collectively the "Intervenor Parties").

In 2011, during the planned repair of CR3 to return it to commercial service, there was another delamination in another section of the CR3 containment building, followed by another delamination in a different section of the CR3 containment building. As a result of and subsequent to these events, the Commission entered a procedural order, Order No. PSC-11-0352-PCO-EI, dividing the docket into phases "to aid the Commission in evaluating the issues in a timely manner." Order No. PSC-11-0352-PCO-EI, p. 4. Phase 1 addressed "all of PEF's decision and activities leading up to the 2009 delamination event;" Phase 2 addressed the prudence of PEF's decision to repair or retire CR3; and Phase 3 addressed all decisions and events subsequent to the October 2009 delamination event. The Commission recognized that the scope of Docket No. 100437-EI remained to "investigate the extended outage and replacement costs of PEF's CR3." Order No. PSC-11-0352-PCO-EI, p. 4.

B. THE SETTLEMENT AGREEMENT.

PEF and the Intervenor Parties in Docket No. 100437-EI subsequently reached a settlement of disputed and potentially disputed issues in Docket No. 100437-EI and other Commission dockets, which is attached as Attachment B to PEF's brief. As the parties explained in the Settlement Agreement, they recognized there were disputed

and potentially disputed issues in Docket No. 100437-EI and other Commission dockets; that settlement of the various positions of the parties on these issues was in the best interests of the parties, the public, and the customers they represented; and that settlement promoted administrative efficiency by avoiding "the time, expense, and uncertainty associated with resolving these issues" in Docket No. 100437-EI, other dockets and "potentially other Commission proceedings." Settlement Agreement, pp. 1-2. The parties agreed that the Settlement Agreement resolved "numerous disputed or potentially disputed matters before the Commission." Settlement Agreement, ¶ 2. (emphasis added).

To this end, the Intervenor Parties expressly waived "their right 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." Settlement Agreement, ¶ 7. (emphasis added). These are intentionally broad settlement terms because the parties wanted to resolve, without the time, expense, and uncertainty of litigation, the prudence of all of PEF's actions from the beginning of the SGR project through the Implementation Date of the Settlement Agreement. Id.

When the parties executed the Settlement Agreement they understood that certain events had not yet occurred, and they agreed to terms for them in the Agreement. The Company had not yet decided to repair or retire and decommission CR3. In the Settlement Agreement, PEF reserved the right to decommission CR3 if PEF determined that it was prudent to do so. Settlement Agreement, ¶ 11a. If PEF

decided to retire CR3 the parties agreed to terms for the recovery in rates for the CR3 assets and the Intervenor Parties waived their rights to challenge the prudence of the Company's decision to retire CR3. Id., ¶ 11b. However, this provision left the Commission the ability to review that decision, even though the Intervenor Parties had waived their right to challenge it.

The Company also had not yet resolved its insurance claims for the CR3 outage and property damage with its carrier, the NEIL. The parties agreed with respect to NEIL that:

> PEF will meet with and advise the Intervenor Parties of any potential or final resolution of insurance coverage amounts either resulting from arbitration, litigation, or settlement of the Company's NEIL claims. The Intervenor Parties shall provide to PEF in writing within twenty (20) business days following such meeting any concerns regarding any such proposed litigation, arbitration, or settlement, and PEF shall provide such concerns to its senior management and Board of Directors as a part of the advice and consultation process. The Parties agree to implement a process whereby the Intervenor Parties' concerns, and PEF's response to the Intervenor Parties' concerns are shown to be formally acted upon by the Board and/or senior management with any reasons for rejection explained in writing. No approval of any such litigation, arbitration, or settlement from the Intervenor Parties is required, and the Intervenor Parties are not precluded from challenging the reasonableness or prudence of such course of action.

Id., ¶ 10b. (emphasis added). The Intervenor Parties understood that neither they nor the Commission had the authority to resolve the NEIL insurance claims for the CR3 outage and property damage under the NEIL policies; therefore, they agreed they had no right to approve the resolution of these claims. They agreed that PEF alone had the right to decide to arbitrate or settle the NEIL insurance claims. They reserved the right to review and challenge, if appropriate, the reasonableness or prudence of the course of action, or the process, PEF employed to resolve the NEIL insurance claims from the Implementation Date through the NEIL settlement date.

C. COMMISSION APPROVAL OF THE SETTLEMENT AGREEMENT.

PEF petitioned the Commission to approve the Settlement Agreement. The Intervenor Parties supported PEF's petition. The Commission issued a public notice for a hearing on the petition to approve the settlement, the public hearing was held, and subsequently the Commission voted to approve the Settlement Agreement. The Commission thereafter issued its final order approving the Settlement Agreement, finding that approval of the Settlement Agreement is in the public interest. Order No. PSC-12-0104-FOF-EI, Docket No. 120022-EI, (March 8, 2012). No appeal was taken from the Commission's final order approving the Settlement Agreement.

The parties agreed in the Settlement Agreement that, subsequent to Commission approval of the Agreement, PEF would move to dismiss Phase 1 and to stay Phases 2 and 3 of Docket No. 100437-EI, consistent with the terms of the Settlement Agreement. PEF filed this Motion, and in Order No. PSC-12-0115-PCO-EI, the Commission granted the motion. The Commission agreed that the Settlement Agreement, based on its express terms, resolved all issues related to Phase 1 of this Docket. The Commission further acknowledged that its approval of the Settlement Agreement was consistent with the "long-standing and strong Commission policy in favor of resolving disputes through settlement or stipulation." Order No. PSC-12-0115-PCO-EI, p. 1. No appeal was taken from this final order dismissing the Phase 1 issues based on the Settlement Agreement. The Commission has, therefore, finally resolved the prudence issues resolved and settled under the Commission-approved settlement. The Commission lacks the authority to re-visit that final Order approving the Settlement Agreement under well-established principles of administrative finality. Moreover, in Florida, "settlements are

highly favored, and will be enforced whenever possible." Robbie v. City of Miami, 469 So. 2d 1384, 1385 (Fla. 1985).

III. THE SETTLEMENT AGREEMENT RESOLVED ALL CLAIMS FOR PEF'S ACTIONS FOR THE CR3 EVENTS IN THIS DOCKET THROUGH THE IMPLEMENTATION DATE TO PLACE PEF IN THE POSITION TO RESOLVE THE CR3 OUTAGE AND PROPERTY DAMAGE CLAIMS WITH NEIL.

This Docket was opened to investigate the prudence of PEF's actions concerning the delamination and the resulting fuel and purchase power replacement costs associated with the extended CR3 outage. The Settlement Agreement approved by the Commission resolves the disputed or potentially disputed prudence issues in this Docket through the Implementation Date of the Settlement Agreement. That is what the Settlement Agreement broadly provides and the Intervenor Parties cannot re-visit them now by contending the resolution of them in the Settlement Agreement is narrower than they actually agreed to in the Agreement. Likewise, the Commission cannot determine the prudence of PEF's actions prior to the Implementation Date. The Commission, consistent with its long-standing policy to resolve disputes by settlement, approved the Settlement Agreement. Under well established principles of administrative finality, the Order approving the Settlement Agreement is final and binding on the Commission. See, e.g., Peoples Gas System, Inc. v. Mason, 187 So. 2d 335, 338 (Fla. 1966); Austin Tupler Trucking, Inc. v. Hawkins, 377 So. 2d 679, 681 (Fla. 1979).

A. THE PARTIES TO THE SETTLEMENT AGREEMENT BROADLY AGREED TO WAIVE, RESOLVE, AND SETTLE THE PRUDENCE OF PEF'S ACTIONS PRIOR TO THE IMPLEMENTATION DATE.

As discussed above, the scope of the waiver of claims by the Intervenor Parties that the Commission approved in the Settlement Agreement is intentionally broad. It covers PEF's actions from the inception of the SGR project through the Implementation

Date. The covered actions are all PEF actions "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 2009 and 2011 CR3 containment building delaminations. Settlement Agreement, ¶ 7. The Intervenor Parties, however, support issues that address the prudence of PEF's actions after the October 2009 delamination through the Implementation Date, by narrowly focusing on and reading out of context as a whole the words "PEF's actions," "SGR project," and "repair activities" in the waiver provision in paragraph 7 of the Settlement Agreement. *See* Attachment A, Proposed Issues 1, OPC 9.

A settlement agreement is a contract, governed by the rules of contract interpretation. Robbie, 469 So. 2d at 1385; Hanson v. Maxfield, 23 So. 3d 736, 739 (Fla. 1st DCA 2009). "Where the language of a contract is unambiguous, there is no occasion for judicial construction. Clear contract language controls." Harris v. Sch. Bd. of Duval County, 921 So. 2d 725, 733 (Fla. 1st DCA 2006). That is precisely the case here. There is nothing unclear or otherwise ambiguous about the language of the Settlement Agreement and, accordingly, there is no reason to resort to construction. It is, nevertheless, clear that PEF's position is supported by several rules of contract interpretation.

The Intervenor Parties' reading of the Settlement Agreement is contrary to a construction that includes all the words of the waiver provision, in the context of the Settlement Agreement as a whole, which is exactly the way the Settlement Agreement terms must be read under Florida law. See Triple E. Devel. Co. v. Floridagold Citrus Corp., 51 So. 2d 435, 438-39 (Fla. 1951) (contractual language should not be read in

isolation and taken out of context, but should instead be interpreted in context and in light of the contract as a whole); Huntington on the Green Condominium v. Lemon Tree I-Condominium, 874 So. 2d 1, 4-5 (Fla. 5th DCA 2004) (same; contracts are to be interpreted in light of the circumstances in which the parties found themselves and the objectives to be achieved); City of Tampa v. Ezell, 902 So. 2d 912, 914 (Fla. 2d DCA 2005) (contract construction should consider the conditions and circumstances surrounding the parties and the objects to be obtained in executing the contract). Simply put, the law does not support reading the waiver in the Settlement Agreement more narrowly than it was written, as the Intervenor Parties now apparently contend.

The parties explained what they intended in the Settlement Agreement. They expressed their intent to settle disputed and potentially disputed issues in all phases of Docket No. 100437-EI, in the Settlement Agreement. Settlement Agreement, p. 2, ¶¶ 2, 7. (emphasis supplied). They understood this Settlement Agreement finally resolved these issues by promoting administrative efficiency and avoiding the time, expense, and uncertainty associated with resolving these issues by litigation in this Docket or other Commission proceedings. Id., p. 2. They further understood that, with the Settlement Agreement, they were supporting PEF's efforts to pursue complete coverage of the costs of repairing CR3 under its insurance policies. Id., p. 3. They intended to and did finally resolve PEF's actions through the Implementation Date to set the stage for the resolution of PEF's insurance claims with NEIL.

To this end, the parties broadly agreed to waive and thereby resolve the prudence of PEF's actions "in connection with" the SGR project or the repair activities, "including but not limited to" all the delaminations. Courts have recognized that the

phrase "in connection with" is a broad, not a limiting, term in an agreement. See Batson-Cook Co. v. Industrial Steel Erectors, 257 F. 2d 410, 413 (5th Cir. 1958) (recognizing that indemnity provision including the term "in connection with" was "indeed broad"); Jacksonville Terminal Co. v. Railway Express Agency, Inc., 296 F. 2d 256, 260 (5th Circ. 1961) (same).[1] This is the context in which the parties used the terms "SGR project" and "repair activities" and, as result, these terms must be read in the breadth of this context. These terms in the Settlement Agreement cannot be read in isolation or taken out of context, but instead they must be interpreted in the context of the whole agreement. See Triple E. Devel. Co., 51 So. 2d at 438-39; Huntington on the Green Condominium, 874 So. 2d at 4-5. In the Settlement Agreement, the term "in connection with" provides part of the context for the terms "SGR project" and "repair activities" and, as a result of that context, these terms encompass all actions in and about the SGR project, repair activities, or delaminations, all operation and management thereof, and all matters relating to or growing out of the SGR project, repair activities, or delaminations. Jacksonville Terminal Co., 296 F. 2d at 260, quoting J. Ray Arnold Lumber Corp., 141 So. at 135.

Likewise, the term "including but not limited to" provides additional context to the waiver of "PEF's actions" for the "SGR project" and "repair activities" in the Settlement Agreement. This is also a broad, not a limiting, term in the Agreement. Indeed, the term "including but not limited to" does not limit the scope of the waiver to the

[1] The Court noted that the Florida Supreme Court had construed the term "in connection with that company's railways" to be an all encompassing term covering "in the interest and upon the employment of that company in and about its railways and the operation and management thereof, and matters connected with, relating to, and growing out of the proper and legitimate business of the company as the possessor and operator of such railways." Id., quoting J. Ray Arnold Lumber Corp. of Olustee v. Richardson, 141 So. 133, 135 (Fla. 1932).

specifically listed events. See AXA Equitable Life Ins. Co. v. Gelpi, 12 So. 3d 783, 785 (Fla. 3d DCA 2009) ("The language of the release, "including but not limited to," does not limit the General Release to those causes of action specifically listed."). See also FusionStorm, Inc. v. Presidio Networked Solutions, Inc., 871 F. Supp. 2d 1345, 1354-55 (M.D. Fla. 2012) (noting that arbitration provision containing the term "including but not limited to" arbitrable claims under Massachusetts law was "all encompassing"); Stivers v. Ford Motor Credit Co., 777 So. 2d 1023, 1025 (Fla. 4th DCA 2000) (noting that statute containing term "including but not limited to" was broadly drafted). Rather, the term "including but not limited to" is another "all encompassing" term applied to PEF's actions with respect to the referenced delaminations.

The parties intended by these express, broad waiver terms an "all encompassing" waiver through the Implementation Date in the Settlement Agreement. This waiver covers PEF's actions associated with, relating to, or growing out of the SGR project, the repairs, or the delaminations prior to the Implementation Date. That is what the provision --- the waiver of "their right 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" --- means in the Settlement Agreement. Settlement Agreement, ¶ 7. (emphasis added).

The breadth of this waiver is best illustrated by one disputed issue raised by the Intervenor Parties. The Intervenor Parties want the Commission to decide if PEF's decision-making was prudent with respect to the pursuit (or lack thereof) of claims

against any vendor on the SGR project or the CR3 delamination repair project. See Attachment A, Proposed Issue OPC 9. This issue specifically addresses potential claims against SGR project vendors who commenced their work prior to the October 2009 delamination and completed it shortly thereafter when the SGR project was complete. The parties specifically agreed, however, to the dismissal of the Phase 1 issues involving the prudence of PEF's actions prior to the October 2009 delamination based on the very same language in paragraph 7 of the Settlement Agreement that they now contend should be interpreted more narrowly than it is written. The Commission granted that motion in a final order that was not challenged on appeal. The Intervenor Parties, then, have proposed an issue that they and the Commission must agree is barred by the broad waiver in the Settlement Agreement. If this same language supports the dismissal of the prudence issues of PEF's actions prior to the October 2009 delamination then it must also bar all claims based on PEF's actions after the October 2009 delamination through the subsequent delaminations and the Implementation Date.

Paragraph 10(b) of the Settlement Agreement also demonstrates that the parties intended that the prudence of all of PEF's actions prior to the Implementation Date was resolved, including PEF's interactions with NEIL. Specifically, paragraph 10(b) states in relevant part that "[n]o approval of any such litigation, arbitration, or settlement [with NEIL] from the Intervenor Parties is required, and the Intervenor Parties are not precluded from challenging the reasonableness or prudence of such course of action." Settlement Agreement, ¶ 10b. Thus, the Intervenor Parties did not contemplate any challenge to PEF's actions with NEIL prior to the Implementation Date and instead

preserved their right to challenge any litigation, arbitration, or ultimate settlement with NEIL in the future and after the Implementation Date. It is well settled that parties are bound to the express terms of their agreement. See Home Development Co. of St. Petersburg v. Bursani, 178 So. 2d 113, 117 (Fla. 1965) (If the parties had intended to include a particular term, "it would have been a simple matter ... to have said so. The fact that they did not, indicates an intention to exclude such a provision."), citing Azalea Park Utilities, Inc. v. Knox-Florida Development Corp., 127 So. 2d 121 (Fla. 2d DCA 1961) (same). As a result, paragraph 10(b) further demonstrates that the plain language of the Settlement Agreement unambiguously waives prudence challenges related to NEIL prior to the Implementation Date of the settlement.

It is also well settled that terms in an agreement must be given their most commonly understood meaning. See Gold Coast Media, Inc. v. Meltzer, 751 So. 2d 645, 646 (Fla. 3d DCA 1999) ("It is fundamental that courts should apply the most commonly understood meaning with regard to the subject matter and circumstances of the contract."); Baker and Co., Florida v. Goding, 317 So. 2d 118 (Fla. 3d DCA 1975) (same). The term "such course of action" in paragraph 10(b) above refers back to the process previously described in paragraph 10b to resolve the NEIL claims including litigation, arbitration, or settlement. Wright & Seaton, Inc. v. Prescott, 420 So. 2d 623, 628-29 (Fla. 4th DCA 1982) (holding that "grammatical construction of contracts generally requires that a relative or qualifying phrase be construed as referring to its nearest antecedent."); Gold Coast Media, 751 So. 2d at 646 (same). Thus, the Settlement Agreement unambiguously reserves the right for the Intervenor Parties to challenge the course of action or process for resolution of the NEIL claims.

PEF agrees that the course of action or process to resolve the NEIL insurance claims resulting from this outage after the Implementation Date was not resolved by the Settlement Agreement and can be addressed in the current proceedings in this Docket. This does not mean, however, that the Intervenor Parties can challenge the prudence of PEF's actions prior to the Implementation Date under the pretext of addressing the Company's course of action with NEIL subsequent to the Implementation Date. This waiver necessarily covers PEF's actions with respect to NEIL and the NEIL insurance policies prior to the Implementation Date too, because there was no reason for PEF to interact with NEIL during this period except "in connection with" the SGR project and repair activities, "including but not limited to" the delaminations. These events are the reason for PEF's claims under the NEIL insurance policies and for PEF's actions with respect to those claims with NEIL prior to the Implementation Date. PEF's actions on the SGR project, with respect to the delaminations and repairs, and with respect to NEIL regarding these events prior to the Implementation Date, are covered by the waiver in the Settlement Agreement approved by the Commission. The Intervenor Parties cannot now reach back and rely on these PEF actions under the pretext of challenging the NEIL settlement.

The parties and the public certainly understood the broad scope of the waiver and resolution of the disputed and potentially disputed issues in this Docket at the time of the public hearing on approval of the Settlement Agreement. OPC represented that the Intervenor Parties, at the time of the hearing, had a "thorough understanding of the facts, circumstances, and engineering factors related to the delamination and ongoing future repairs." (Limited Proceeding Hearing on Petition for Limited Proceeding to

Approve Stipulation and Settlement Agreement by Progress Energy, Florida, Inc., February 20, 2012, ("Settlement Agreement Hearing"), Tr. 30). They made this representation because they understood they were waiving all disputed or potentially disputed issues through the Implementation Date. The public grasped this, with one member questioning how the Company can "pay their way out of answering questions about" the events at CR3. (Settlement Agreement Hearing, Tr. 60). The understanding that the Settlement Agreement finally resolved these questions was clear at the public hearing on approval of the Settlement Agreement.

The Company further made clear that it intended the Settlement Agreement to resolve the uncertainty and cost of this litigation. The Company expressed to the Commission that the Agreement promoted administrative efficiency by avoiding the time and expense of litigating the settlement issues and provided estimates of the litigation expenses likely avoided by the Settlement Agreement. (Tr. 26, 77-78). Commissioners agreed, with one Commissioner acknowledging that "adversarial litigation sometimes is the best way to reach a final order and a final decision, but it is not the best way in all instances," and that the settlement allowed the Commission and all parties to better put their resources "to making good, smart, long-term decisions." (Id. at 103). The Commission and the Company confirmed the further understanding that the Settlement Agreement aligned the Company's and the parties' interests with respect to NEIL and did not negatively impact the Company's position with respect to NEIL. (Id. at 91-93). The only way for the Settlement Agreement to align the parties' interests and to not impact adversely the Company's position with respect to the NEIL policies, is for the Settlement Agreement to finally resolve all disputed or potentially disputed issues with

respect to PEF's actions prior to the Implementation Date such that there was and could be no finding of imprudence of any PEF action prior to that date affecting the coverage claims under the NEIL outage and property damage policies. That is, of course, exactly what the Company and the Intervenor Parties agreed to in the Settlement Agreement and what the Commission approved.

B. THE COMMISSION IS BOUND BY ITS FINAL ORDER APPROVING THE RESOLUTION OF THE PRUDENCE OF PEF'S ACTIONS PRIOR TO THE IMPLEMENTATION DATE IN THE SETTLEMENT AGREEMENT.

The doctrine of administrative finality precludes the Commission from revisiting the settled issues under the Settlement Agreement approved by the Commission and therefore, prohibits the improper issues that the Intervenor Parties have asked the Commission to consider here. Florida courts have long held that administrative agency orders must eventually pass out of the agency's control and become final and no longer subject to change or modification. See Peoples Gas System, Inc. v. Mason, 187 So. 2d 335, 338 (Fla. 1966) (holding that there must be a terminal point in every proceeding, both administrative and judicial, at which the parties and public may rely on a decision as final and dispositive of their rights and the involved issues); Austin Tupler Trucking, Inc. v. Hawkins, 377 So. 2d 679, 681 (Fla. 1979) (same). No extraordinary circumstances exist to invoke an exception to this rule. Id.; Florida Power Corp. v. Garcia, 780 So. 2d 34, 44-45 (Fla. 2001). The Commission cannot now "second guess" its decision in Order No. PSC-12-0104-FOF-EI that approval of the Settlement Agreement was in the public interest. Peoples' Gas System, 187 So. 2d at 340 (explaining that the Commission cannot "second guess" its earlier decision that an approved territorial agreement was in the public interest). That Order finally resolving

the disputed and potentially disputed issues in this Docket through the Implementation Date of the Settlement Agreement approved by the Commission is final and the Intervenor Parties may not avoid this by ignoring the plain language of the Settlement Agreement.

IV. CONCLUSION.

The parties finally resolved disputed and potentially disputed issues in this Docket through the Implementation Date of the Settlement Agreement. The express intent was to finally resolve these issues, remove the uncertainty and cost of litigating them, and put the Company in a position to resolve the NEIL claims without the risk of potential prejudice to those claims as a result of the prudence determination of issues through the Implementation Date. The Settlement Agreement reserves the right for the Commission to review the prudence of the decision to retire rather than repair CR3 (but not for the Intervenor Parties who signed the Settlement Agreement). The Settlement Agreement reserves the right of the Intervenor Parties and the Commission to challenge and determine, respectively, the prudence of the process of settling the NEIL claims. This is what the Settlement Agreement does, the Intervenor Parties agreed to it, the Commission approved it in its final Order, and, therefore, it is binding on the parties and the Commission. Therefore, the Commission must reject the improper issues that the Intervenor Parties have asked it to consider and should issue a ruling that the Settlement Agreement bars any issue that goes to the prudence of any of PEF's actions related to this Docket prior to February 23, 2012. This ruling will allow the parties to finalize an agreed-to list of issues for this matter and will allow this now four-year old proceeding to proceed to final hearing and resolution in an expeditious manner.

Respectfully submitted,

John T. Burnett
Deputy General Counsel
Dianne M. Triplett
Associate General Counsel
PROGRESS ENERGY SERVICE COMPANY LLC
Post Office Box 14042
St. Petersburg, FL 33733-4042
Telephone: (727) 820-5587
Facsimile: (727) 820-5519

James Michael Walls
Florida Bar No. 0706242
Blaise N. Gamba
Florida Bar No. 0027942
Matthew R. Bernier
Florida Bar No. 0059886
CARLTON FIELDS, P.A.
Post Office Box 3239
Tampa, FL 33601-3239
Telephone: (813) 223-7000
Facsimile: (813) 229-4133

CERTIFICATE OF SERVICE

I HEREBY CERTIFY a true and correct copy of the foregoing has been furnished to counsel and parties of record as indicated below via electronic and U.S. Mail this 19th day of April, 2013.

Attorney

Keino Young
Theresa Lee Eng Tan
Michael Lawson
Florida Public Service Commission Staff
2540 Shumard Oak Boulevard
Tallahassee, FL 32399-0850
Phone: (850) 413-6218
Facsimile: (850) 413-6184
Email: kyoung@psc.state.fl.us
ltan@psc.state.fl.us
mlawson@psc.state.fl.us

Charles Rehwinkel
Associate Counsel
Erik Sayler
Associate Counsel
Office of Public Counsel
c/o The Florida Legislature
111 West Madison Street, Room 812
Tallahassee, FL 32399-1400
Phone: (850) 488-9330
Email: rehwinkel.charles@leg.state.fl.us
Sayler.erik@leg.state.fl.us

Jon C. Moyle, Jr.
Moyle Law Firm
118 North Gadsden Street
Tallahassee, FL 32301
Phone: (850) 681-3828
Fax: (850) 681-8788
Email: jmoyle@moylelaw.com

James W. Brew
F. Alvin Taylor
Brickfield Burchette Ritts & Stone, PC
1025 Thomas Jefferson St NW
8th FL West Tower
Washington, DC 20007-5201
Phone: (202) 342-0800
Fax: (202) 342-0807
Email: jbrew@bbrslaw.com
ataylor@bbrslaw.com

Robert Scheffel Wright
John T. LaVia
c/o Gardner Law Firm
1300 Thomaswood Dr
Tallahassee, FL 32308
Phone: (850) 385-0070
Facsimile: (850) 385-5416
Email: schef@gbwlegal.com

Mr. Paul Lewis, Jr.
Progress Energy Florida, Inc.
106 East College Avenue, Ste. 800
Tallahassee, FL 32301-7740
Phone: (850) 222-8738
Facsimile: (850) 222-9768
Email: paul.lewisjr@pgnmail.com

Working Draft Issue List for 100437

Issues

Issue 1: Were DEF'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 from the first delamination in the containment structure at Crystal River Unit 3 in October, 2009 until the "Implementation Date" of PEF's Stipulation and Settlement Agreement in FPSC Docket 120022-EI (February 22, 2012) reasonable and prudent? If not, what action, if any, should the Commission take?

SACE's revised Issue 1

- Was DEF's decision to pursue the repair of Crystal River Unit 3 after the October 2, 2009 delamination event reasonable and prudent? If not, what action, if any, should be taken by the Commission?

Issue 2: Were DEF'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 from the "Implementation Date" of PEF's Stipulation and Settlement Agreement in FPSC Docket 120022-EI (February 22, 2012) until the date PEF made the decision to retire Crystal River Unit 3 (January 31, 2013) reasonable and prudent? If not, what action, if any, should the Commission take?

SACE's revised Issue 2

- Did PEF reasonably and prudently manage the repair activities for Crystal River Unit 3 after the October 2, 2009 delamination? If not, what action, if any, should be taken by the Commission?

Issue 3: Was DEF's decision to retire Crystal River Unit 3 reasonable and prudent? If not, what action, if any, should the Commission take?

Issue 4a: After February 22, 2012 and prior to electing to settle its claims with NEIL, did DEF prudently pursue its CR3-related insurance claims with NEIL?

Issue 4b: Did DEF preserve the issue whether the second delamination event that occurred on or about March 14, 2011 was a separate and distinct event for which NEIL replacement insurance coverage was in place?

Issue 4: Was Duke's decision to settle DEF's claims with Nuclear Electric Insurance Limited regarding the CR3 outage on the terms set forth in the Settlement agreement between DEF and NEIL reasonable and prudent? If not, what action, if any, should the Commission take?

In determining Issue 4, the Commission shall/may/should consider:

Issue 4c: Was it prudent for DEF not to submit to binding arbitration with NEIL?

Issue 4d: The amount of payments that DEF received from NEIL?

Issue 5: What action, if any, should the Commission take as a result of the DEF decision to retire the CR3 unit with respect to the BOP Uprate of CR3 associated with the December 7, 2009 base rate tariff filing by DEF?

Issue 6: What are the appropriate components or types of cost of the CR3 Asset for purposes of establishing customer rates after December 31, 2016?

Issue 7: What are the appropriate amounts of the individual components of the CR3 Asset for purposes of establishing customer rates after December 31, 2016?

Issue 8: What criteria, methodologies or procedures, if any, should the Commission establish for determining the components and amounts of the CR3 asset for purposes of establishing customer rates after December 31, 2016?

Issue 9: What monitoring or auditing measures, if any, should the Commission establish or undertake in order to determine the CR3 Asset for purposes of establishing customer rates after December 31, 2016?

Issue 10: Have the NEIL insurance proceeds been allocated consistent with the Settlement Agreement approved in Commission Order No. PSC-12-0104-FOF-EI?
(Restatement of former Staff Issue 5 omitted from this list)

Factual Issues

Fact 1: What is the total amount of repair costs incurred between October 2, 2009 and March 14, 2011, and what portion of those costs, if any, has been recovered from ratepayers?

Fact 2: What refunds under the Settlement Agreement approved in Commission Order No. PSC-12-0104-FOF-EI has DEF made and what refunds under that Agreement are still due and owing? (Restatement of former Staff Issue 5)

Fact 3: Have the terms and conditions of the Settlement Agreement approved in Commission Order No. PSC-12-0104-FOF-EI, associated with Crystal River 3 been followed? (Restatement of former Staff Issue 4, deleting reference to Section 10 and 11 of Settlement)

Fact 4: What is the total amount of repair costs incurred from March 14, 2011, to date, and what portion of those costs, if any, has been recovered from ratepayers?

ATTACHMENT A

Fact 5: Fact 5 broken into three parts (see below)

Fact 5a: What was the total amount of NEIL insurance coverage available to DEF related to the Crystal River 3 outage? (May not be 100% a fact issue)

Fact 5b: How much did DEF claim was due and owing from NEIL?

Fact 5c: How much did DEF receive from NEIL?

Fact 6: Was interest applied to the NEIL settlement sums, and if so, at what rate?

Fact 7: Did DEF make an accidental outage insurance claim with NEIL associated with the second delamination event that occurred on or about March 14, 2011? If not, why not? (Note: the "If not, why not?" language may be moot following a review of correspondence between DEF and NEIL)

Fact 8: Did DEF ever file a "Proof of Loss" under the NEIL policies, and if so, in what amounts by policy category?

Fact 9: What is the current booked amount of the deferred regulatory asset associated with the retirement of the Crystal River 3 nuclear unit, based on Section 11(b) of the Settlement Agreement approved in Commission Order No. PSC-12-0104-FOF-EI? (May not be 100% a fact issue)

Fact 10: What are the replacement fuel costs from December 31, 2012 to February 5, 2013?

OPC 2: ~~What were PEF's Replacement Cost estimates to repair Crystal River 3 and how much did PEF receive from NEIL related to costs not attributable to Accidental Outage or replacement power?~~ Split into several issues:

Fact 11a: What was the replacement cost estimate to repair CR3 at the time the Duke Board made its decision to retire CR3?

Fact 11b: How much did DEF receive from NEIL to repair CR3 at the time the Duke Board made its decision to retire CR3?

Fact 11c: How much did DEF receive from NEIL attributable to Accidental Outage or replacement power at the time the Duke Board made its decision to retire CR3?

Disputed Issues

OPC 7: Did DEF maintain adequate and appropriate accidental outage and property damage insurance coverage for CR3?

OPC 8: Did DEF maintain a prudent arm's length relationship with NEIL in all dealings, including negotiation of the scope of policy coverage, endorsement provisions and other amendatory and/or change activities related to the terms and conditions of the NEIL Policies?

OPC 9: Was DEF's decision-making prudent with respect to the pursuit (or lack thereof) of claims, if any, against any vendor on the SGR Project or CR3 delamination repair project?

OPC 13: As one of the largest members of NEIL, a mutual insurance company, did Duke Energy have a conflict of interest when negotiating with NEIL for insurance proceeds? If so, was that conflict of interest made known to the Commission and intervening parties?

OPC 24: What is the amount of CR3 O&M expense currently in rates, if any, and what action should the Commission take at this time with respect to this expense as a result of the DEF decision to retire the CR3 unit?

Issue ___: Was it prudent for DEF to procure insurance for CR3 from an insurance company not licensed or registered to do business in Florida? (New Disputed Issue)

Issues Needing Clarification or Re-Wording

OPC 23: What is the salvage value, if any, for any CR3-related asset(s)? (probably a fact issue to be mentioned, and deferred by stipulation to a later proceeding)

Omitted Issues from Staff's April 2, 2013 List:

Issue 3 (formerly Staff Issue 5, revised pursuant to discussion at 3/12/13 meeting): Is PEF/Duke obligated to refund any additional replacement fuel costs pursuant to Section 9 of the Settlement Agreement approved in Commission Order No. PSC-12-0104-FOF-EI? If so, what is the amount to be refunded and through which clause(s) should the amount be refunded, and when?

Issue 17 (formerly OPC 5*): Were PEF's actions with respect to, and course of action toward, NEIL, reasonable and prudent with respect to the events related to the CR3 Outage and PEF's claims for payment under the NEIL Policies? (Intervenors agree to drop if it can be argued under Issue 4, 4a-4d, and disputed issues)

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Petition for limited proceeding to approve stipulation and settlement agreement by Progress Energy Florida, Inc.	DOCKET NO. 120022-EI ORDER NO. PSC-12-0104-FOF-EI ISSUED: March 8, 2012

The following Commissioners participated in the disposition of this matter:

RONALD A. BRISÉ, Chairman
LISA POLAK EDGAR
ART GRAHAM
EDUARDO E. BALBIS
JULIE I. BROWN

FINAL ORDER APPROVING STIPULATION AND SETTLEMENT AGREEMENT

BY THE COMMISSION:

On January 20, 2012, Progress Energy Florida, Inc. (PEF) filed a Petition for Limited Proceeding to Approve Stipulation and Settlement Agreement. PEF requested that we hold a limited proceeding pursuant to Sections 366.076 and 120.57(2), Florida Statutes (F.S.), and Rule 28-106.301, Florida Administrative Code (F.A.C.). The purpose of the limited proceeding was for us to consider the Stipulation and Settlement Agreement (Agreement) which is attached as Exhibit A to this Order. The Agreement is executed by PEF, the Office of Public Counsel (OPC), the Florida Industrial Power Users Group (FIPUG), the Florida Retail Federation (FRF), White Springs Agriculture Chemicals, Inc. d/b/a PCS Phosphates (White Springs), and the Federal Executive Agencies (FEA).

The Agreement resolves certain outstanding issues in several of our existing and continuing dockets, including Docket No. 100437-EI, which involves the examination of the outage and replacement fuel/power costs associated with PEF's Crystal River Unit 3 (CR3) steam generator replacement, and Docket No. 120009-EI, our ongoing Nuclear Cost Recovery Clause. The resolution of these issues in these dockets involves, among other provisions in the Agreement, an adjustment to PEF's base rates. The Agreement settles certain issues regarding the prudence of PEF's decisions and actions on the steam generator repair project, provides for a refund of $288 million of replacement fuel costs to PEF's customers, provides for a resolution of the potential repair or decommissioning of CR3, and settles issues involving the Levy Nuclear Project and the CR3 power uprate project. The Agreement provides an adjustment in base rates beginning with the first billing cycle of January 2013, with PEF's base rates otherwise frozen through the last billing cycle of 2016, subject to certain other provisions in the Agreement. The signatories to the Agreement are organizations that represent the major customer groups served by PEF and include OPC, the entity statutorily charged with representing people of the state of Florida in proceedings before us. Thus, the customers' interests are fairly represented by the signatories to the Agreement.

ATTACHMENT B

We have jurisdiction pursuant to Chapter 366, F.S., including Sections 366.04, 366.041, 366.05, 366.06, 366.07, 366.076, 366.8255, 366.93, and 120.57(2) and (4), F.S., and Rule 28-106.301 and 28-106.302, F.A.C.

We provided public notice of the hearing and the opportunity to present evidence and oral argument. On February 20 and 22, 2012, we took testimony and oral argument regarding the Agreement from the parties to the Agreement, as well as members of the public.

Based upon the petition, our review of the Agreement, and the evidence and oral argument taken at the hearing, we find approval of the Agreement to be in the public interest. Accordingly, we approve Agreement which is attached to this Order as Exhibit A and made a part hereof. The tariffs attached to the Agreement are approved.

Based on the foregoing, it is

ORDERED by the Florida Public Service Commission that the attached Stipulation and Settlement Agreement is approved. It is further

ORDERED that the tariffs attached to the Stipulation and Settlement Agreement are approved. It is further

ORDERED that this docket shall be closed if no appeal is timely filed.

By ORDER of the Florida Public Service Commission this 8th day of March, 2012.

ANN COLE
Commission Clerk
Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, Florida 32399
(850) 413-6770
www.floridapsc.com

Copies furnished: A copy of this document is provided to the parties of record at the time of issuance and, if applicable, interested persons.

LCB

NOTICE OF FURTHER PROCEEDINGS OR JUDICIAL REVIEW

The Florida Public Service Commission is required by Section 120.569(1), Florida Statutes, to notify parties of any administrative hearing or judicial review of Commission orders that is available under Sections 120.57 or 120.68, Florida Statutes, as well as the procedures and time limits that apply. This notice should not be construed to mean all requests for an administrative hearing or judicial review will be granted or result in the relief sought.

Any party adversely affected by the Commission's final action in this matter may request: 1) reconsideration of the decision by filing a motion for reconsideration with the Office of Commission Clerk, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, within fifteen (15) days of the issuance of this order in the form prescribed by Rule 25-22.060, Florida Administrative Code; or 2) judicial review by the Florida Supreme Court in the case of an electric, gas or telephone utility or the First District Court of Appeal in the case of a water and/or wastewater utility by filing a notice of appeal with the Office of Commission Clerk, and filing a copy of the notice of appeal and the filing fee with the appropriate court. This filing must be completed within thirty (30) days after the issuance of this order, pursuant to Rule 9.110, Florida Rules of Appellate Procedure. The notice of appeal must be in the form specified in Rule 9.900(a), Florida Rules of Appellate Procedure.

EXHIBIT A

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Nuclear cost recovery clause	Docket No. 120009-EI
In re: Examination of the outage and replacement fuel/power costs associated with the CR3 steam generator replacement project, by Progress Energy Florida, Inc.	Docket No. 100437-EI
In re: Petition of Progress Energy Florida, Inc. for limited proceeding to approve Stipulation and Settlement Agreement, including Certain Rate Adjustments.	Docket No. _____

STIPULATION AND SETTLEMENT AGREEMENT

WHEREAS, Progress Energy Florida ("PEF" or the "Company"), the Office of Public Counsel ("OPC"), the Florida Industrial Power Users Group ("FIPUG"), the Florida Retail Federation ("FRF"), White Springs Agricultural Chemicals, Inc. ("White Springs"), and the Federal Executive Agencies ("FEA") (collectively referenced as the "Parties") have reached a resolution of certain outstanding issues in the above-referenced dockets and other matters which are set forth in this Stipulation and Settlement Agreement (the "Agreement") dated January 20, 2012; and

WHEREAS, unless the context clearly requires otherwise, the term Party or Parties means a signatory to this Agreement, and Intervenor Parties means collectively OPC, FIPUG, FRF, White Springs, and FEA; and

WHEREAS, the Parties recognize that there are disputed issues in the above-referenced Public Service Commission ("PSC" or "Commission") dockets that may have

substantial consequences for PEF, consumers and investors alike, and that settlement of the various positions of the Parties on these issues is in the best interests of the Parties, the interests they represent, and the public; and

WHEREAS, settlement of these issues promotes administrative efficiency and avoids the time, expense, and uncertainty associated with resolving these issues in the above-referenced Commission dockets and potentially other Commission proceedings; and

WHEREAS, the Parties further recognize that the issues addressed by this Agreement resolve in a comprehensive manner an unprecedented combination of circumstances at a difficult time in the Florida economy, and that all Floridians have been affected by the current economic climate; and

WHEREAS, the Parties further recognize that continued uncertainty related to the issues addressed in the Agreement adversely affects the Company and its customers, and this Agreement will mitigate those uncertainties; and

WHEREAS, this Agreement will also help to mitigate the impact of energy prices by, among other things, refunding $288 million through the Fuel Cost Recovery Clause ("Fuel Clause") to customers between 2013 and 2016, and potentially up to an additional $100 million through the Fuel Clause between 2015 and 2016; removing the Crystal River Unit 3 ("CR3") nuclear plant from rate base while CR3 is out of service; and limiting the costs consumers can be charged for the Levy Nuclear Project ("LNP") through 2017; and

WHEREAS, the Intervenor Parties support PEF's efforts to repair and restore CR3 to a safe and fully operable condition in a timely fashion; and

WHEREAS, the Intervenor Parties further support and encourage PEF's efforts to pursue complete coverage of the costs of repairing CR3 under its insurance policies with Nuclear Electric Insurance Limited ("NEIL") to the full extent of the coverage limits in any policies,

NOW, THEREFORE, in consideration of the foregoing and the covenants contained herein, the Parties hereby agree and stipulate as follows:

1. This Agreement will become effective upon approval by final Commission vote (the "Implementation Date"), and continue through the last billing cycle in December 2016 (the "Term"), unless otherwise specified in this Agreement.

2. This Agreement resolves numerous disputed or potentially disputed matters before the Commission. The Parties reserve all rights, unless such rights are expressly waived under the terms of this Agreement.

LNP

3. The Parties do not oppose PEF obtaining the LNP Combined Operating License ("COL") from the U.S. Nuclear Regulatory Commission ("NRC"), terminating the LNP engineering, procurement, and construction contract, and recovering the costs associated with those activities through the Nuclear Cost Recovery Clause ("NCRC") as set forth in the Agreement. Any future PEF actions concerning the LNP shall not be attributed to this Agreement or to the Intervenor Parties' agreement to the terms and conditions herein. To the extent that final LNP costs are above or below the estimated $350 million LNP remaining balance, PEF shall submit a final true-up filing (subject to

verification) to the PSC setting forth the final actual LNP costs, and the amount of any true-up cost or credit to customer bills.

4. The LNP component of the Company's NCRC charges shall, effective the first billing cycle in January 2013, be set at $3.45/1,000 kWh, for a residential customer, and a corresponding adjustment from the current LNP factors shall be made for commercial and industrial rates as shown on Exhibit 5. This factor shall be fixed at the levels shown on Exhibit 5 until the estimated remaining LNP balance of approximately $350 million (retail), and carrying costs, is recovered (estimated to be 5 years), with true up occurring in the final year of recovery, in accordance with paragraph 3. Concurrent with the adjustment of the LNP NCRC factor, PEF shall, effective with the first billing cycle in January 2013, transfer its collection of the annual retail revenue requirements associated with the carrying costs on the deferred tax asset in the amount reflected in Exhibit 6 from the NCRC to base rates. Such base rate adjustment shall be established by the application of a uniform percentage increase to the demand and energy charges of the Company's base rates, including delivery voltage credits, power factor adjustment and premium distribution service. This uniform percent adjustment will be calculated using the billing determinants set forth in Exhibit 1, Attachment A to this Agreement and presented in the format of MFRs E-12 and E-13c for the projected year of 2013.

5. PEF shall not recover any LNP costs from customers, apart from those identified in this Agreement, throughout the Term. PEF shall not, before March 1, 2017, file for any additional LNP nuclear cost recovery, unless otherwise agreed to by the Parties, it being the Parties' intent that PEF will not recover any additional LNP costs from customers before the first billing cycle of January 2018.

ATTACHMENT B

6. PEF will treat the allocated wholesale cost of LNP as a Retail Regulatory Asset, and include this asset as a component of rate base and amortization expense in reported net operating income for earnings surveillance. PEF will have the ability to amortize that Retail Regulatory Asset through 2016, with PEF's discretion to suspend such amortization in full or in part and/or to accelerate such amortization in full or in part as deemed appropriate by the Company; provided, however, PEF shall amortize 100% of the regulatory asset on or before December 31, 2016. This adjustment shall not be taken into account for purposes of determining whether PEF can seek a base rate adjustment pursuant to paragraph 20.

CR3

7. It is the intent of the Parties and the Parties stipulate that this Agreement resolves issues regarding the CR3 steam generator replacement ("SGR") project in all phases of PSC Docket No. 100437-EI subject to the terms of this Agreement. It is the intent of the Parties that, within five days of the Implementation Date, PEF will file a motion to dismiss Phase 1 and to stay Phases 2 and 3 of Docket No. 100437-EI consistent with the terms of this Agreement. The Parties agree that this Agreement makes no allocation or determination of fault, prudence or reasonableness in or related to PEF's actions taken 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. The Parties, however, have not contended and do not now contend that the delaminations prior to the Implementation Date were foreseeable or expected by the Company. 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 by PEF during the period referenced in this paragraph 7, the Intervenor Parties cannot and will not challenge the prudence of PEF's actions on the SGR project or PEF's repair activities from the inception date of the SGR project through the Implementation Date in any PSC or judicial proceeding.

8. a. PEF shall place CR3 in extended cold shutdown effective January 1, 2011, at which time depreciation and other accruals will be suspended and/or reversed until the unit is returned to commercial operation or retired and amortized. PEF shall remove CR3 from rate base, the revenue requirement of which is excluded from the rates established in paragraph 13, effective the first billing cycle of January 2013 and until the plant returns to commercial operation. Effective with its removal from customer rates, an accrual of a carrying charge equivalent to that authorized in PSC Order No. PSC-10-0604-PAA-EI (which rate is 7.44 percent, as shown on Exhibit 2 to this Agreement) on CR3 investments removed from customer rates shall be allowed until these investments, along with accrued carrying costs, are placed back into customer rates. The ratemaking treatment of placing CR3 in extended cold shutdown is based on the unprecedented and complex nature of the totality of the circumstances addressed in this Agreement and shall have no precedential effect in any future Commission proceeding.

b. Upon the return of CR3 to commercial operation, PEF shall be authorized to increase its base rates for the annual revenue requirements of all CR3 investments (excluding O&M which was not removed from customer rates), and including (1) all capitalized delamination repair costs (in excess of such repair costs that are reimbursed through Nuclear Electric Insurance Limited ("NEIL") proceeds and subject to the provisions in paragraph 10.c), and (2) carrying costs accrued during the extended cold shutdown. Such base rate increase shall be established by the application of a uniform percentage increase to the demand and energy charges of the Company's base rates including delivery voltage credits, power factor adjustment and premium distribution service. This uniform percentage increase will be calculated using the billing determinants included as Exhibit 1 to this Agreement for the projected year of 2013, adjusted for the increases provided herein, and at the return on equity set forth in paragraph 15; with the capital structure as set forth in Exhibit 4. The Intervenor Parties reserve their rights to participate in any such proceeding, to challenge the appropriateness of PEF's CR3 revenue requirements, and to challenge the actual capitalized delamination repair costs as set forth in paragraph 10.

9. Refunds through the Fuel Clause. Pursuant to the terms of this Agreement, PEF agrees to the following:

a. Refund to customers $288 million (retail) as of December 31, 2011. PEF shall refund through the Fuel Clause 50% of $258 million in 2013, and the remaining 50% through the Fuel Clause in 2014. The remaining balance of $30 million will be refunded through the Fuel Clause solely to customers on Rate Schedules RS-1, RSL-1, RSL-2, GS-1, and GS-2 (and their time-of-use counterpart schedules, to the

extent applicable) based on an allocation of 94% of such refund amounts to the Residential Service rate schedules and 6% to the General Service, Non-Demand rate schedules, at an annual rate of $10 million per year in years 2014, 2015, and 2016.

b. In the event PEF, in good faith, commits, through formal Board and/or senior management action to commence, and then commences, containment building repairs by December 31, 2012 in accordance with a publicly announced plan and schedule issued after the Implementation Date and designed to return CR3 to service within the final approved schedule (estimated at this time to be 30 months), PEF shall 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 CR3 containment building repairs by December 31, 2012, PEF shall be obligated to: (1) refund a pro-rated amount not to exceed $40 million towards replacement fuel and purchased power costs if CR3 remains out of service in 2015 (for example, if CR3 commences commercial operation on February 1, 2015, PEF shall refund $3.33 million); and (2) refund a pro-rated amount not to exceed $60 million towards replacement fuel and purchased power costs if CR3 remains out of service in 2016 (for example, if CR3 commences commercial operation on February 1, 2016, PEF shall refund $5 million).

c. Except for the aforementioned refunds, PEF shall be 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 beginning October 1, 2009 and ending on the earlier of December 31, 2016 or the date on which CR3 commences commercial operation following the completion of the delamination repairs. PEF's right to recover its prudently incurred fuel and purchased power costs does not affect the

rights of customers to receive reimbursement from NEIL proceeds for such costs as otherwise provided in this Agreement. Thus, for that period, the unavailability of CR3 shall not be the basis for any disallowance of fuel or purchased power costs, and the Intervenor Parties waive their rights to challenge PEF's recovery of such costs, except as provided below in this paragraph 9.c. Intervenor Parties reserve the right to raise issues regarding the prudence and reasonableness of PEF's fuel acquisition and power purchases, and other fuel prudence issues unrelated to the CR3 extended outage. In the event that repair activities continue beyond December 31, 2016, the Parties are not prohibited from contesting PEF's right to recover replacement fuel costs beyond that period due to the continued CR3 repair outage.

10. CR3 Repair. To the extent that PEF pursues repair of CR3, the following shall apply:

a. (1) PEF will establish an estimated cost and schedule to repair the unit, and shall meet with the Intervenor Parties in advance of senior management and Board approval of any such repair plan. The Intervenor Parties shall provide to PEF in writing within twenty (20) business days following such meeting any concerns regarding PEF's repair plan, and PEF shall provide such concerns to its senior management and Board of Directors as part of the advice and consultation process. The Parties agree to implement a process whereby the Intervenor Parties' concerns and PEF's response to the Intervenor Parties' concerns are shown to be formally acted upon by the Company's Board and/or senior management with any reasons for rejection explained in writing. Approval of or by any or all of the Intervenor Parties is not required with respect to PEF's decision to repair CR3, the repair cost estimate, or the repair schedule.

(2) In the event PEF, in good faith, commits, through formal Board and/or senior management action to commence, and then commences, containment building repairs by December 31, 2012, and continues to implement such repairs (except as otherwise provided in paragraph 11) in accordance with a publicly announced plan and schedule designed to return CR3 to service within any schedule approved by the Board as part of the Board's decision to commence repairs (such schedule estimated at this time to be 30 months with recognition that such estimated schedule could change due to events beyond the Company's reasonable control), the Intervenor Parties waive their rights to challenge PEF's decision to repair and the selected repair plan. However, Intervenor Parties retain and do not waive any rights to challenge PEF's execution of the repair plan and the prudence of PEF's repair costs; except as provided in paragraphs 10.a.(3) and 10.a.(4) below, the Intervenor Parties waive their rights to challenge PEF's execution of the repairs, as long as PEF's repair efforts and activities commence prior to December 31, 2012, and are materially consistent with the estimated repair costs and schedule associated with PEF's publicly announced repair plan. The Intervenor Parties reserve their rights to challenge any potential double recovery of CR3 O&M costs that are shown to have also been capitalized as part of the CR3 repairs; it being PEF's intent not to treat such costs in a manner that would result in double recovery (e.g., payment of O&M costs through base rates during the repair period and then seeking a return on such costs as capitalized components of the CR3 rate base when CR3 is returned to service).

(3) The waiver of rights set forth in paragraph 10.a.(2) above shall remain in effect up through and including the earlier of (i) the time at which PEF

obtains final resolution of PEF's insurance coverage claims for CR3 with NEIL (through arbitration, litigation, settlement, or otherwise) for CR3 repairs, or (ii) December 31, 2013. Once PEF receives such a resolution of its NEIL insurance claims for CR3, the waiver of rights in paragraph 10.a.(2) will no longer apply prospectively for any new actions after that time should PEF decide to continue with repairs after such final coverage resolution and discussion with the Parties in accord with Section 10.a.(1) above.

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

b. PEF will meet with and advise the Intervenor Parties of any potential or final resolution of insurance coverage amounts either resulting from arbitration, litigation, or settlement of the Company's NEIL claims. The Intervenor Parties shall provide to PEF in writing within twenty (20) business days following such meeting any concerns regarding any such proposed litigation, arbitration, or settlement, and PEF shall provide such concerns to its senior management and Board of Directors as a part of the advice and consultation process. The Parties agree to implement a process whereby the Intervenor Parties' concerns and PEF's response to the Intervenor Parties' concerns are shown to be formally acted upon by the Board and/or senior management with any reasons for rejection explained in writing. No approval of any such litigation, arbitration, or settlement from the Intervenor Parties is required, and the

Intervenor Parties are not precluded from challenging the reasonableness or prudence of such course of action.

c. To the extent that PEF receives a final resolution of NEIL insurance coverage for project repairs (by arbitration, litigation, settlement of its claims, or otherwise) that does not cover the total cost of the repairs to return CR3 to commercial operation, the Parties agree to meet and discuss how best to address that deficiency. If resolution cannot be reached, the Parties agree to present the issue to the Commission for resolution, subject to the limitations set forth in paragraph 10.

d. PEF will conduct meetings at least quarterly until CR3 commences commercial operation (or is retired) to brief the Intervenor Parties on all matters relating 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, if any; licensing status and issues; and risk identification and mitigation measures. PEF will also provide updated metrics for the project, monthly management PowerPoint presentation documents, if any, and periodic project status reports that PEF keeps in the ordinary course of its business as agreed between PEF and the Parties. Information disclosed will be subject to appropriate confidentiality agreements in support of PEF's obligation and commitment to provide the Intervenor Parties with non-privileged information that is similar to that provided to senior management. If there is a dispute about whether such information is privileged, the Parties agree to meet and discuss how best to address any such dispute. If resolution cannot be reached, the Parties agree to present the issue to the Commission for resolution.

e. In the event the repair costs exceed the initial repair estimate initially approved by the Progress Energy's (or its successor's) Board subsequent to the Implementation Date, the Parties agree that every dollar of such costs shall be shared on a 50% Progress shareholders/50% Progress customers basis up to $400 million (retail) over the Board's initially approved cost estimate. In the event that costs exceed $400 million above the Board's initially approved cost estimate, the Parties agree to meet and discuss how best to address that amount of cost increase (e.g., if the initial cost estimate initially approved by the Board is $1.3 billion and actual repair cost to return CR3 to commercial operation is $1.8 billion, each dollar of the first $400 million shared above $1.3 billion will be shared equally by Progress shareholders and Progress customers, and the Parties will meet to discuss how best to address the additional $100 million cost increase). If resolution cannot be reached, the Parties agree to present the issue to the Commission for resolution.

f. The Parties agree that any documents provided by any Party pursuant to the advice and consultation process in this paragraph 10 may be used by any Party in any future Commission or judicial proceeding. Any discussions during any such meetings (or records of such discussions) shall be confidential, for ongoing settlement purposes only, and not subject to discovery by any means or method or admissible in any such Commission or judicial proceeding.

11. CR3 Retirement.

a. Notwithstanding any other provisions of this Agreement, the Parties recognize that the decision making related to repairing or decommissioning CR3 is complex and subject to a number of unknown factors, including but not limited to the

cost of the repair and the likelihood of obtaining NRC approval to restart CR3 after the repair. PEF, therefore, reserves the right to decommission CR3 if it determines that it is prudent to do so. If PEF determines to decommission rather than repair CR3 and return the unit to commercial operation, all NEIL insurance proceeds will, unless otherwise agreed among the Parties, be applied first to offset the consumers' share of replacement fuel costs incurred after December 31, 2012, with any remaining proceeds to be applied to any unrecovered CR3-related investments, i.e., the remaining unamortized rate base balance for CR3. For purposes of this provision, the replacement fuel costs from January 2013 through year end 2016 shall be calculated as the difference between PEF's total fuel and purchased power costs as incurred without CR3 available for service, and the estimated PEF total fuel and purchased power costs that PEF would have incurred if CR3 had been available.

b. Upon PEF's decision to retire CR3, and until inclusion in customer rates, which inclusion shall not occur prior to the first billing cycle in January 2017, PEF will be authorized to implement deferral accounting through the creation of regulatory assets to address the revenue requirement associated with all CR3 related costs (including, but not limited to actual depreciation/amortization expense, operation and maintenance expense, property taxes, and cost of capital return) and regulatory liabilities to address O&M costs, which may be funded from the Nuclear Decommissioning Trust or obviated by ceasing operations, and property taxes which may no longer be assessed (for example, a type of regulatory liability would entail Retail Nuclear O&M 2010 MFR C-4 $90 million (per year) (See Exhibit 7) less actual incurred O&M deferred as a regulatory asset). The cost of capital return or carrying charge will

be based on the approved AFUDC rate with the cost of equity set to 70% of the then Commission authorized rate (See Exhibit 3); it being the intent of the Parties that whenever the Commission authorizes a change (whether an increase or a decrease) to PEF's return on equity in the future, the 70% formula in this paragraph will apply to any remaining CR3 investments. PEF shall not seek an increase in customer rates for the aforementioned revenue requirements on the net costs deferred and accumulated in the regulatory assets or liabilities such that the effective date of said increase would occur prior to the first billing cycle of January, 2017. Nothing in this Agreement shall preclude PEF from filing for such an increase during the Term so long as the increase would not occur prior to the first billing cycle of January 2017. Any subsequent request for increase in customer rates to include recovery of the costs of the retired CR3 asset shall also be based on the overall cost of capital utilizing the same formula of 70% of the cost of equity being requested, with the cost of equity remaining subject to the Commission's final order. The Intervenor Parties waive their rights to challenge the prudence of any decision by the Company to retire CR3, and to contest PEF's right to recover a return of and return on the deferred and accumulated CR3 investments, regulatory assets/liabilities, and carrying costs, in the above referenced rate increase proceeding using the reduced rate of return specified above, or any other proceeding. The Intervenor Parties retain the right to contest the calculation of the deferred regulatory asset, and the execution of the repairs, if any, subject to the terms of paragraph 10. The Parties agree that the balance of regulatory assets pursuant to this Agreement shall not be used as the basis for interim rate relief or included for purposes of determining whether PEF's rate of return on equity has fallen below 9.5% so as to trigger PEF's right

to seek a base rate increase pursuant to paragraph 20 of this Agreement. The Parties agree that any remaining CR3 investments shall be amortized through 2036.

c. PEF acknowledges that a PEF decision, if any, to retire rather than repair CR3 shall be solely its own decision and not be attributed to the Intervenor Parties as a result of their entering into this Agreement.

12. CR3 Uprate. PEF will recover carrying costs and other NCRC recoverable costs through the NCRC consistent with section 366.93, Florida Statutes, but will not petition 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 (for depreciation, property taxes and O&M costs) until cost recovery becomes effective, and all carrying costs will continue to be recovered through NCRC until such time as base rates have been increased consistent with the no-sooner-than nine-month provision above. At such time as base rates are increased for these assets, recovery through NCRC will cease except for true-ups of prior costs. In-service investments from the Uprate project will be part of the CR3 investments removed from rate base as set forth in paragraph 8 above.

13. Base Rate Matters Effective with the first billing cycle in January 2013, PEF shall adjust its base rates to effect a $150 million (retail) increase in annual revenue requirements, which includes the impact of paragraph 8.a above. Such base rate adjustment shall be established by the application of a uniform percentage increase to the demand and energy charges reflected in the Company's existing base rate schedules, including delivery voltage credits, power factor adjustment and premium distribution service. This uniform percentage increase will be calculated using the billing

determinants included as Exhibit 1, attached to this Agreement and presented in the format of MFRs E-12 and E-13c for the projected year of 2013. All existing rate schedules shall remain in effect except as modified above. Except as otherwise provided for in this paragraph and this Agreement, the Company shall freeze its base rates through the last billing cycle of December 2016.

14. Effective with the first billing cycle of January 2014, the Company will be authorized to remove the capital assets installed and in service on the Crystal River Units 4 & 5 ("CR4 & 5") power plants to comply with the Federal Clean Air Interstate Rule ("CAIR") from the Environmental Cost Recovery Clause ("ECRC") and transfer those capital assets to base rates in an amount which will equal the annual retail revenue requirements of the assets projected to be in-service as of December 31, 2013 (excluding O&M related costs) which will be reflected in the Company's filing (Form 42-4P; Project 7.4) in Docket 120007-EI. Such base rate adjustment shall be established by the application of a uniform percentage increase to the demand and energy charges of the Company's base rates including delivery voltage credits, power factor adjustment and premium distribution service. This uniform percent increase will be calculated using the billing determinants for the projected year of 2014, consistent with the format shown in Exhibit 1, Attachment A, adjusted for the increases provided herein. These adjustments are in addition to the base rate adjustments provided for in paragraphs 4, 8.b, and 13 of the Agreement.

15. Effective on the Implementation Date, PEF will have an authorized return on equity of 10.5% with a range of reasonableness of +/-100 basis points for the purpose of addressing earnings levels, earnings surveillance and cost recovery clauses.

ATTACHMENT B

In the month following CR3's commencement of commercial operation, PEF's ROE shall increase to 10.7% +/-100 basis points, including a return calculated using the 10.7% ROE as specified above, on CR3 in-service revenue requirements as set forth in paragraph 8.b. Commencing with the Implementation Date, the applicable annual AFUDC rate will be 7.44%. (See Exhibit 2). In the month following CR3's commencement of commercial operation, PEF's applicable AFUDC rate will be 7.53%. (See Exhibit 4).

Other Matters

16. Effective on the Implementation Date, PEF will be authorized, at its discretion, 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 over the Term of this Agreement. PEF will be authorized to make a new specific adjustment to its common equity balance and rate base working capital balance for the purposes of calculation of rate base and the capitalization ratios used for surveillance reporting pursuant to Rule 25-6.1352, F.A.C., and pass-through clauses. The calculation of this adjustment will be based on the methodology employed by Standard and Poor's Ratings Service ("S&P") in its determination of imputed off balance sheet obligations related to future capacity payments to qualifying facilities and other entities under long-term purchase power agreements. The amount of the adjustment to common equity and rate base will fluctuate over time with changes in the amount of future purchase power obligations. The Parties agree that the common equity and rate base adjustment set forth in this paragraph is unique to the specific circumstances of

PEF, as it relates to this Agreement, and the treatment of PEF's common equity and rate base in this paragraph shall not constitute binding Commission precedent or create a presumption of correctness as to the adjustment for future ratemaking in any future proceeding involving PEF or any other utility. Moreover, this adjustment and the Parties' agreement to such adjustment in this unique proceeding shall be without prejudice to any Party's ability to advocate a different position in future proceedings not involving this Agreement. This adjustment shall not be taken into account for purposes of calculating interim rates or determining whether PEF can seek a base rate adjustment pursuant to paragraph 20 of this Agreement.

17. All other cost of service and rate design issues will be determined in accordance with Exhibit 1 to this Agreement.

18. 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 the Company in 2011. This reduction in depreciation expense will be limited by any remaining balance of the cost of removal reserve throughout the Term. PEF shall not be permitted to use cost of removal if the use would cause the Company to exceed the high point of the ROE range established in this Agreement, i.e., 11.5% or 11.7%, as applicable. These credit amounts to depreciation expense are in lieu of the annual amortization of any theoretical depreciation reserve surplus approved in PEF's previous base rate order PSC-10-0131-FOF-EI. The cost of removal regulatory asset will be recovered commencing on the earlier of the Company's next filed base rate proceeding or upon completion and approval by this Commission of the Company's next

depreciation study. Any recovery period of this regulatory asset will be no longer than the average remaining service life of the assets, approved in Company's most recent depreciation study. PEF agrees to file a Depreciation Study, Fossil Dismantlement Study or Nuclear Decommissioning Study on or before July 31, 2017.

19. No Party to this Agreement will request, support, or seek to impose a change to any provision in this Agreement. This Agreement, and the attached exhibits and schedules, represent the entire and complete agreement between the parties. The Parties consider each provision to be integral to their respective support for the Agreement in its entirety, and no provision may be changed or altered without the consent of each signatory Party in a written document duly executed by all parties to this Agreement. To the extent a dispute arises among the Parties about the provisions, interpretation, or application of this Agreement, the Parties agree to meet and confer in an effort to resolve the dispute. To the extent that the Parties cannot resolve any dispute, the matter may be submitted to the Commission for resolution. Except as provided in paragraph 20, the Intervenor Parties will neither seek nor support any reduction in PEF's base rates and charges, including limited, interim, or any other rate decreases, that would take effect prior to the first billing cycle for January 2017, except for any such reduction requested by PEF or as otherwise provided for in this Agreement. PEF may not petition for an increase in base rates and charges that would take effect prior to the first billing cycle for January 2017, except as otherwise provided for in this Agreement. Notwithstanding the rate relief mechanism described in paragraph 20, PEF is prohibited from seeking or implementing an interim rate increase

pursuant to Section 366.071, Florida Statutes, until the expiration of the Term of this Agreement.

20. If PEF's retail base rate earnings fall below a 9.5% return on equity (ROE) (9.7% ROE if such earnings reduction occurs after CR3 is returned to commercial operation) as reported on a Commission adjusted or pro-forma basis on a PEF monthly earnings surveillance report during the Term of the Agreement, PEF may petition the Commission to amend its base rates during the Term of this Agreement. Such request by the Company shall be limited to an increase that would achieve a 10.5% ROE (10.7% ROE if CR3 is returned to commercial operation). No Party waives its right to participate in such a proceeding, and such participation will only be limited by the terms of this Agreement. If PEF's retail base rate earnings exceed an 11.5% 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 earnings surveillance report during the Term of the Agreement, any Intervenor Party to this Agreement shall be entitled to petition the Commission for a review of PEF's base rates and charges. Prior to requesting any such relief under this paragraph, PEF must have reflected on its referenced surveillance report any remaining credited depreciation expense (cost of removal) identified in paragraph 18. The Parties to this Agreement are not precluded from participating in any such proceedings. This paragraph shall not be construed to bar or limit PEF from any recovery of costs otherwise contemplated by this Agreement.

21. Nothing shall preclude the Company from requesting the Commission to approve the recovery of the following types of costs:

a. Costs that are of a type which traditionally and historically would be, have been, or are presently recovered through cost recovery clauses or surcharges, or

b. Costs which the Legislature or Commission determines are clause recoverable prior to or subsequent to the approval of this Agreement.

c. With respect to storm damage costs caused by a tropical system named by the National Hurricane Center or its successor, nothing in this Agreement shall preclude PEF from petitioning the Commission to seek recovery of costs associated with any storms without the application of any form of earnings test or measure and irrespective of previous or current base rate earnings or level of cost of removal reserve. The Parties agree that recovery from customers for storm damage costs will begin, subject to Commission approval, on an interim basis, sixty days following the filing of a cost recovery petition with the Commission, and subject to true-up pursuant to further proceedings before the Commission, and will be based on a 12-month recovery period. All storm related costs shall be calculated and disposed of pursuant to Rule 25-6.0143, F.A.C., and will be limited to costs resulting from a tropical system named by the National Hurricane Center or its successor, an estimate of incremental costs above the level of storm reserve prior to the storm event, and replenishment of the storm reserve to the level as of the Implementation Date of this Agreement. The Intervenor Parties to this Agreement are not precluded from participating in any such proceedings. The Parties expressly agree that any proceeding to recover costs associated with any storm shall not be a vehicle for a "rate case" type inquiry concerning the expenses, investment, or financial results of operations of the

Company and shall not apply any form of earnings test or measure or consider previous or current base rate earnings or level of cost of removal reserve.

22. The provisions of this Agreement are contingent on approval of this Agreement in its entirety by the Commission. The Parties further agree that they will support this Agreement and will not request or support any order, relief, outcome, or result in express conflict with the terms of this Agreement in any administrative or judicial proceeding relating to, reviewing, or challenging the establishment, approval, adoption, or implementation of this Agreement or the subject matter hereof. No Party will assert in any proceeding before the Commission that this Agreement or any of the terms in the Agreement shall have any precedential value.

23. This Agreement dated as of January 20, 2012 may be executed in counterpart originals, and a facsimile of an original signature shall be deemed an original.

In Witness Whereof, the Parties evidence their acceptance and agreement with the provisions of this Agreement by their signatures below.

[Remainder of page left intentionally blank]

EXHIBIT A

Florida Power Corporation dba
Progress Energy Florida, Inc.

By _____

Alex Glenn, Esquire
Post Office Box 14042
St. Petersburg, Florida 33733

ATTACHMENT B

EXHIBIT A

Office of Public Counsel

By: _____

J.R. Kelly, Esquire
Charles Rehwinkel, Esquire
111 W. Madison St., Room 812
Tallahassee, Florida 32399

ATTACHMENT B

EXHIBIT A

Florida Industrial Power Users Group

By _____

Jon C. Moyle, Jr., Esquire
Vicki Gordon Kaufman, Esquire
Keefe Anchors Gordon & Moyle, PA
118 North Gadsden Street
Tallahassee, FL 32301

ATTACHMENT B

EXHIBIT A

White Springs Agricultural Chemicals, Inc.

By: _____

James W. Brew, Esquire
Brickfield, Burchette, Ritts & Stone, P.C.
1025 Thomas Jefferson St., NW
Eighth Floor, West Tower
Washington, DC 20007

ATTACHMENT B

EXHIBIT A

Florida Retail Federation

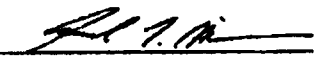
By Robert Scheffel Wright

Robert Scheffel Wright, Esquire
Gardner Law Firm
1300 Thomaswood Drive
Tallahassee, FL 32308

ATTACHMENT B

EXHIBIT A

Federal Executive Agencies

By 

Capt. Samuel Miller
c/o AFCESA-ULFSC
139 Barnes Drive, Suite 1
Tyndall Afb, FL 32403-5319

ATTACHMENT B