

State of Florida



## Public Service Commission

CAPITAL CIRCLE OFFICE CENTER • 2540 SHUMARD OAK BOULEVARD  
TALLAHASSEE, FLORIDA 32399-0850

### -M-E-M-O-R-A-N-D-U-M-

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**DATE:** May 7, 2009

**TO:** Office of Commission Clerk (Cole)

**FROM:** Division of Economic Regulation (Slemkewicz, Maurey, Draper)  
Office of the General Counsel (Fleming, Klancke, Saylor, Young)  
Office of Strategic Analysis and Governmental Affairs (Ellis)

**RE:** Docket No. 090144-EI – Petition for limited proceeding to include Bartow repowering project in base rates, by Progress Energy Florida, Inc.

**AGENDA:** 05/19/09 – Regular Agenda – Tariff Filing – Interested Persons May Participate

**COMMISSIONERS ASSIGNED:** All Commissioners

**PREHEARING OFFICER:** McMurrian

**CRITICAL DATES:** 05/19/09 (60-Day Suspension Date)

**SPECIAL INSTRUCTIONS:** Place after Docket No. 090079-EI

**FILE NAME AND LOCATION:** S:\PSC\ECR\WP\090144.RCM.DOC  
Attachment Not Available

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### Case Background

On March 20, 2009, Progress Energy Florida, Inc. (PEF or Company) filed tariffs and a petition for a limited proceeding to include the Bartow Repowering Project (Project) in base rates. The Company is engaged in business as a public utility providing electric service as defined in Section 366.02, Florida Statutes (F.S.), and is subject to the jurisdiction of the Commission. PEF's service area comprises approximately 20,000 square miles in 35 of Florida's counties. PEF serves more than 1.6 million retail customers.

PEF requested an increase in its retail rates and charges to generate \$126,212,000 in additional gross annual revenues, subject to refund. This increase would allow the Company to

earn an overall rate of return of 7.87 percent, or a 10.00 percent return on equity (ROE). The Company based its request on the first year annualized revenue requirements for the Project. The 7.87 percent overall rate of return was calculated using the projected 2006 capital structure shown on MFR Schedule D-1 that was filed in its stipulated rate case in Docket No. 050078-EI.<sup>1</sup> The estimated in-service date for the Project is June 1, 2009. PEF has requested that the new rates become effective with the first billing cycle in July 2009.

On April 3, 2009, the Office of Public Counsel (OPC), the Florida Industrial Power Users Group (FIPUG), the Attorney General's Office, The Florida Retail Federation (FRF), and PCS Phosphate (collectively, Intervenors) filed a joint consolidated response, opposing PEF's request for interim rate relief, petition related to accounting treatment for pension and storm hardening expenses and petition for limited proceeding to include the Bartow Repowering Project in base rates. On April 8, 2009, the parties and staff met to discuss the Intervenors' joint consolidated response. At the meeting, staff noted that while a response to a response is not normally contemplated by the Commission's rules, it might be helpful for PEF to file some additional clarifying comments regarding the Intervenors' response. The Intervenors did not object to staff's request at that time, nor have they filed an objection to PEF's response. PEF filed a response to the joint intervenors consolidated response on April 15, 2009.

This recommendation addresses PEF's request to increase its retail rates and charges to generate \$126,212,000 in additional gross annual revenues, subject to refund, for the Project. The Commission has jurisdiction over this request for a rate increase under Sections 366.02, 366.03, 366.04, 366.05, 366.06 and 366.076, F.S.

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<sup>1</sup> The Stipulation was approved by Order No. PSC-05-0945-S-EI, issued September 28, 2005, in Docket No. 050078-EI, In re: Petition for rate increase by Progress Energy Florida, Inc.

### **Discussion of Issues**

**Issue 1:** Does the stipulation approved by Order No. PSC-05-0945-S-EI allow PEF to request a limited proceeding to implement a base rate increase?

**Recommendation:** Yes. Staff believes that the Stipulation clearly contemplates PEF's request for a limited proceeding for the Bartow Repowering Project and that such a proceeding is not prohibited by the Stipulation. Moreover, staff believes that by filing the revised tariff sheet with its petition, PEF has triggered the application of the "file and suspend" provisions of Section 366.06, F.S. (Fleming, Klancke, Young, Sayler)

### **Staff Analysis:**

#### **PEF's Petition**

As stated in the case background, on March 20, 2009, PEF filed a petition for a limited proceeding to include the Bartow Repowering Project in base rates. As part of its petition, PEF included testimony and exhibits as well as a tariff sheet listing its proposed charges. PEF asserts that pursuant to the Stipulation, if PEF's retail base earnings fall below a 10 percent ROE, PEF may petition the Commission to amend its base rates as a limited proceeding pursuant to Section 366.076, F.S. PEF contends that its earnings are below 10 percent ROE, as reflected on its monthly earnings surveillance reports filed with the Commission. Therefore, PEF asserts that its request is consistent with and authorized by the Stipulation.

#### **Intervenors' Consolidated Response**

The Intervenors object to the granting of interim, expedited and/or limited proceeding relief and assert that the entitlement of any rate relief should be within the evidentiary schedule established for Docket No. 090079-EI, the rate base proceeding. The Intervenors assert that the Commission's approval of the requested limited proceeding would interfere with the parties' preparation for the rate case and cause substantial hardship and prejudice. The Intervenors further contend that all separate petitions should be considered, if at all, in the rate case.

The Intervenors recognize that major costs such as the Bartow Repowering Project could negatively impact PEF's earnings; however, the Intervenors contend that PEF could have filed the Bartow Petition in 2008, rather than at this time, because the Company's surveillance reports showed that PEF's achieved ROE was below 10 percent in its August 2008 Surveillance Report.

The Intervenors argue that PEF's request for a limited proceeding for the Bartow Repowering Project is erroneously based on a 10 percent floor which was not contemplated by the 2005 Settlement and Stipulation (Stipulation) approved by the Commission in Order No. PSC-05-0945-S-EI. The Intervenors further contend that the Stipulation acknowledges that the parties to the Stipulation would have a right to participate in a proceeding held pursuant to a limited proceeding request. However, the Intervenors assert that the Commission should consider the Bartow Repowering Project in the rate case where it can receive a full evidentiary hearing before the rates are changed. Furthermore, the Intervenors' argue that the requested

limited proceeding rate relief cannot be granted prior to the rate case inquiry and hearing to be conducted in Docket No. 090079-EI.

### PEF's Response to Joint Intervenors' Consolidated Response<sup>2</sup>

On April 15, 2009, PEF filed its response to the Intervenors' joint consolidated response. PEF asserts that the Stipulation provides that if PEF's retail base earnings fall below a 10 percent ROE, PEF may petition the Commission to amend its base rates as a limited proceeding. PEF contends that the Intervenors do not contest that PEF's retail base rate earnings have fallen below a 10 percent ROE, nor do the Intervenors contest that PEF is entitled to a limited proceeding for the Bartow Repowering Project.

PEF states that it is not claiming that it has a guaranteed 10 percent ROE in the Stipulation. Rather, PEF asserts that the 10 percent ROE represents a minimum reasonable ROE for purposes of this limited proceeding. Furthermore, PEF argues that the Intervenors concede that the 10 percent ROE is a "trigger" authorizing PEF to seek to amend its base rates when its achieved ROE falls below that threshold level. Thus, PEF contends that if it can seek to amend its base rates when earnings fall below 10 percent, then one could conclude that the rates are no longer fair, just, and reasonable. Accordingly, PEF asserts that the requested expedited limited proceeding is contemplated by the Stipulation and thus is appropriate.

Along with its petition for a limited proceeding, PEF filed a revised tariff, although PEF did not expressly request relief under the file and suspend provisions. PEF argues that by filing a revised tariff sheet with its petition for a limited proceeding, PEF triggered application of the "file and suspend" provisions even though the petition did not explicitly reference those provisions. In its response, PEF alternatively requests that its Limited Proceeding Petition be treated as a request for relief under the "file and suspend" provision, rather than the PAA procedures, if Staff and the Commission believe that "file and suspend" is the appropriate relief mechanism.

### Analysis

#### *2005 Stipulation*

On September 28, 2005, in Order No. PSC-05-0945-S-EI, issued in Docket No. 050078-EI, the Commission approved the Stipulation between the parties to PEF's last petition for a rate increase. The relevant portion of Section 7 of the Stipulation provides:

7. If PEF's retail base rate earnings fall below a 10 [percent] return on equity 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 notwithstanding the provisions of Section 4, either as a general rate proceeding or as a

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<sup>2</sup> The Commission's rules do not contemplate a response to a response; however, a response was requested at the April 8, 2009 informal meeting, at which all parties attended. No objection has been filed to PEF's response.

limited proceeding under Section 366.076, F.S. The Parties to this Agreement are not precluded from participating in such a proceeding, and, in the event PEF petitions to initiate a limited proceeding under this Section, any Party may petition to initiate any proceeding otherwise permitted by Florida law. . . .

In addition, Section 4 of the Stipulation provides that PEF may not petition for an increase in base rates that would take effect prior to the first billing cycle for January 2010, except as provided in Sections 7 and 10 of the Agreement. Section 7 allows PEF to petition for a limited proceeding if its retail base rate earnings fall below a 10 percent ROE as reported on its monthly earnings surveillance report.

In Order No. PSC-05-09045-S-EI the Commission approved the Stipulation specifying that it established rates that are fair, just, and reasonable. Both the Intervenors as well as the Company agree that Section 7 of the Stipulation provides that the Company may seek to amend its base rates in the event that PEF's achieved ROE falls below the 10 percent threshold, notwithstanding Section 4. Thus, Staff believes that the Stipulation clearly contemplates PEF's request for a limited proceeding for the Bartow Repowering Project. As discussed in Issue 2, it appears that PEF's retail base earnings have fallen below the 10 percent threshold. Therefore, staff believes that PEF's request for a limited proceeding to implement a temporary base rate increase is appropriate.

#### *Limited Proceeding*

Section 366.076(1), F.S., provides that "the Commission may conduct a limited proceeding to consider and act upon any matter within its jurisdiction, including any matter the resolution of which requires a public utility to adjust its rates to consist with the provisions of this chapter." Furthermore, "[t]he commission shall determine the issues to be considered during such a proceeding and may grant or deny any request to expand the scope of the proceeding to include other matters." A limited proceeding should be narrow in scope and is designed to avoid the greater expenditure of time and resources typically associated with a full base rate proceeding. A limited proceeding is normally processed as a PAA in which a point of entry will be afforded to substantially interested persons to address concerns they may have regarding the petition.

In the instance case, PEF has petitioned the Commission pursuant to Section 366.076, F.S., for a limited proceeding for the Bartow Repowering Project. As part of its petition, PEF included testimony and exhibits as well as a tariff sheet listing its proposed charges. While the Commission may address this matter as a limited proceeding, staff notes that procedurally the Commission must take affirmative action to suspend, approve, or deny the tariff in accordance with the "file and suspend" provisions in Chapter 366, F.S. Staff notes that substantially interested persons are afforded the same point of entry in both a "file and suspend" petition as well as limited proceeding.

*File and Suspend*

PEF's petition for a limited proceeding to implement a base rate increase does not involve a full base rate proceeding. Rather, PEF has requested limited rate relief for the Bartow Project subject to refund pending a final hearing during PEF's full base rate proceeding where the costs of the Bartow project will be analyzed by the Commission. PEF alternatively requests that its Limited Proceeding Petition be treated as a request for relief under the "file and suspend" provisions rather than the Commission's PAA procedures, if staff and the Commission believe that "file and suspend" is the appropriate relief mechanism. In support of PEF's alternative request, the Company has asserted that by filing a revised tariff sheet to increase rates with its petition, PEF triggered the application of the "file and suspend" provisions even though its petition did not specifically reference those provisions.

The Intervenors argue that PEF's request for a limited proceeding for the Bartow Repowering Project is erroneously predicated on a 10 percent floor which was not contemplated by the Stipulation. Moreover, the Intervenors contend that the Commission's approval of the requested limited proceeding would interfere with the parties' preparation for the rate case and cause substantial hardship and prejudice. Rather, the Intervenors assert that the Commission should consider the Bartow Repowering Project in the rate case where it can receive an evidentiary hearing before the rates are changed as a result thereof.

The Commission has broad authority in determining just and reasonable rates and the means through which costs are recovered and rates are established. In Citizens v. Wilson, 571 So. 2d 1300 (Fla. 1990), the Court expressly confirmed the application of the "file and suspend" provisions to proceedings other than full base rate proceedings. Section 366.04, F.S., states that "[t]he commission shall have jurisdiction to regulate and supervise each public utility with respect to its rates and service . . ." Section 366.05(1), F.S., states that "[i]n the exercise of such jurisdiction, the commission shall have power to prescribe fair and reasonable rates and charges . . . to be observed by each public utility." Furthermore, Section 366.06(1), F.S., provides:

- (1) A public utility shall not, directly or indirectly, charge or receive any rate not on file with the commission for the particular class of service involved, and no change shall be made in any schedule. All applications for changes in rates shall be made to the commission in writing under rules and regulations prescribed, and the commission shall have the authority to determine and fix fair, just, and reasonable rates that may be requested, demanded, charged, or collected by any public utility for its service.

(Emphasis added.) Under the "file and suspend" provisions, the Commission can, based on adequate factual justification, approve rates subject to refund without first requiring a hearing.<sup>3</sup>

Staff concludes that, pursuant to the broad authority granted in Sections 366.04, 366.05, and 366.06, F.S., and the specific authority granted by the "file and suspend" provisions of

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<sup>3</sup> Citizens v. Mayo, 333 So. 2d 1 (Fla. 1976); Citizens v. Public Service Commission, 425 So. 2d 534 (Fla. 1982).

Section 366.06(3), F.S., the Commission may establish, prior to a full administrative hearing, rates subject to refund outside of full base rate proceedings.

PEF's Petition for a Limited Proceeding for the Bartow Repowering Project contains a tariff sheet listing its proposed charges. Thus, by filing a revised tariff sheet with its petition staff believes that PEF triggered the application of the "file and suspend" provisions of Section 366.06, F.S. Pursuant to the Commission's authority under these provisions, the Commission may, without hearing, approve or deny recovery of the proposed charges subject to refund, pending the outcome of a final hearing in this matter.<sup>4</sup> Alternatively, the Commission may take no action on the proposed tariff within the 60-day suspension period, thus allowing the proposed charges to go into effect by operation of law. Under this course of action, however, the amounts collected by PEF would not be subject to refund.

For the reasons discussed *supra*, Staff believes that the Stipulation clearly contemplates PEF's request for a limited proceeding for the Bartow Repowering Project and that such a proceeding is not prohibited by the Stipulation. Moreover, staff believes that by filing the revised tariff sheet with its petition, PEF has triggered the application of the "file and suspend" provisions of Section 366.06, F.S. Finally, staff notes that Section 366.06(3), F.S., requires that the Commission take affirmative action to suspend, approve, or deny this petition within the 60-day statutory timeframe. Thus, staff recommends that the Commission take affirmative action on the remaining issues contained in this recommendation.

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<sup>4</sup> Order No. PSC-05-0187-PCO-EI, issued February 17, 2005, in Docket No. 041291-EI, In re: Petition for authority to recover prudently incurred storm restoration costs related to 2004 storm season that exceed storm reserve balance, by Florida Power & Light Company (leave to amend pleadings should be granted in order to allow disputes to be resolved on their merits), at p. 8.

**Issue 2:** Is PEF's calculation of the \$126,212,000 annual base rate increase and the 9.12 percent increase factor to recover the revenue requirements associated with the Bartow Repowering Project reasonable?

**Recommendation:** Yes. Staff recommends that the \$126,212,000 annual base rate increase and 9.12 percent increase factor for the Bartow Repowering Project are reasonable for the purposes of this limited proceeding. (Slemkewicz, Maurey, Ellis, Draper)

**Staff Analysis:** The Project includes both the upgrade of 4 existing heavy oil-fired steam units to natural gas-fired combined cycle units and the addition, expansion, upgrade, and rebuilding of related transmission facilities. The expected in-service date for the Project is June 1, 2009. PEF witness Toomey presented the calculation of the \$126,212,000 annual revenue requirements for the Project on Exhibit No. PT-1 attached to his prefiled direct testimony. (See Attachment 1) The revenue requirements are based on the projected annualized rate base and related expenses during the first year of the Project's operation. However, the 7.87 percent overall cost of capital utilized in the calculation of the revenue requirements is based on the projected 2006 capital structure shown on MFR Schedule D-1 that was filed in its stipulated rate proceeding in Docket No. 050078-EI.<sup>5</sup> In calculating the 7.87 percent overall cost of capital, PEF substituted 10.00 percent as the return on equity (ROE) in the projected 2006 capital structure.

The estimated construction cost of the Project is \$605.6 million (\$646.0 million – system) for the upgraded generation units and \$108.9 million (\$154.2 million – system) for the transmission facilities or an estimated total Project construction cost of \$714.5 million (\$800.2 million – system). The estimated annual operating expenses, excluding income taxes, are \$43.9 million (\$47.0 million – system) for the upgraded generation units and \$2.6 million (\$3.2 million – system) for the transmission facilities or a total estimated annual operating expense of \$46.5 million (\$50.2 million – system). Staff has reviewed these estimated amounts and they appear reasonable for the Project.

For purposes of its request for a base rate increase through a limited proceeding under Section 366.076, F.S., PEF used an overall cost of capital of 7.87 percent based on an ROE of 10.00 percent and the capital structure for the projected historical test year ended December 31, 2006. According to PEF, both the ROE and the adjustments recognized in the capital structure are consistent with the 2005 Stipulation. Paragraph 7 of the Stipulation states, in part:

If PEF's retail base rate earnings fall below a 10% return on equity 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 notwithstanding the provisions of Section 4, either as a general rate proceeding or as a limited proceeding under Section 366.076, F.S. . . .

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<sup>5</sup> Order No. PSC-05-0945-S-EI, issued September 28, 2005, in Docket No. 050078-EI, In re: Petition for rate increase by Progress Energy Florida, Inc.



The Company projects that its 2009 achieved ROE will be below 7.00 percent without any rate relief.<sup>6</sup> Consequently, PEF believes the Stipulation expressly entitles the Company to request an increase in base rates associated with the Project to bring the Company's earnings up to an ROE of 10.00 percent.

As discussed in the Joint Intervenors' consolidated response to PEF's request for a limited proceeding to include the Project in base rates, the "Intervenors vigorously object to this interpretation as contrary to the plain meaning of the Stipulation and the revenue sharing mechanism that it established." The Intervenors contend there is "no entitlement in the Stipulation that PEF should be allowed to earn at least 10% for 2009 as is suggested or claimed in the various PEF pleadings filed in these dockets." The Intervenors further contend that there is no express or implied authorization for PEF to receive the proposed relief while the Bartow rate relief request is pending. For these reasons, the Intervenors contend the proposed relief is not available to PEF and that the Company's request for recovery prior to an evidentiary hearing should be denied.

Staff's recommendation of whether PEF is entitled to the proposed base rate increase associated with the Project is discussed in Issue 1. If it is determined that the requested relief should be granted to PEF, staff believes that the calculation of the \$126,212,000 annual base rate increase and 9.12 percent increase factor for the Bartow Repowering Project are reasonable for the purposes of this limited proceeding.

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<sup>6</sup> PEF Petition, p.4, filed in Docket No. 090079-EI, In re: Petition for increase in rates by Progress Energy Florida, Inc.

**Issue 3:** Should the \$126,212,000 annual base rate increase to recover the revenue requirements associated with the Bartow Repowering Project be held subject to refund?

**Recommendation:** Yes. The \$126,212,000 annual base rate increase should be held subject to refund pending a review and final determination of the appropriate calculation of the Bartow Repowering Project revenue requirements in PEF's base rate proceeding in Docket No. 090079-EI. (Slemkewicz, Maurey)

**Staff Analysis:** In its Petition, PEF requested that the base rate increase be held subject to refund, stating the following:

PEF, accordingly, requests Commission approval to include the current Bartow Repowering costs in base rates and to allow a rate increase factor of 9.12 percent effective with the first billing cycle for July 2009 subject to refund, pending any necessary review of the reasonableness of those costs in the base rate proceeding.

(Petition, p. 2-3) It is not clear from this language whether or not it is PEF's intent to limit a review of the Project costs to only the construction costs and operating expenses that are shown on Exhibit PT-1. (See Attachment 1)

Although staff is not recommending any adjustments be made related to the determination of the appropriate amount PEF is entitled to recover associated with the Project, it should be noted that PEF's calculation is premised upon a number of assumptions that will be vigorously challenged by the Intervenor in the upcoming hearing. In addition, the construction costs and operating expenses are subject to review in the base rate proceeding in Docket No. 090079-EI. The calculation of the \$126,212,000 base rate increase also needs to be reviewed to insure that it is based only on incremental costs. Based on the Commission's ultimate decisions on these particular issues, the amount collected under this limited proceeding related to these issues should be subject to refund.

PEF's requested rate relief in this limited proceeding is predicated on a projected capital structure for the historical test year ended December 31, 2006. There is no provision, expressed or implied, that a projected capital structure for a historical test year from 3 years ago is the appropriate capital structure on which to base the cost of capital for purposes of determining the revenue requirement associated with this limited proceeding. In addition, the proposed capital structure reflects 2 specific adjustments related to imputed equity that total approximately \$866.6 million. Both of these adjustments are related to provisions from past stipulations that are not binding on Commission decisions going forward. Finally, in reconciling rate base and capital structure, PEF's proposed capital structure reflects a pro rata adjustment over all sources of capital. This reconciliation treatment is inconsistent with past Commission practice.

In addition to the issues related to the overall cost of capital PEF has used to determine the proposed amount to recover associated with the Project, PEF's calculation also failed to include the income tax effect of the adjustment required pursuant to Rule 25-14.004, Florida

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Administrative Code (F.A.C.) Based on past Commission precedent<sup>7</sup> and financial information reported by PEF's parent company, Progress Energy, Inc., in its 10K report filed with the Securities and Exchange Commission, it is a rebuttable presumption that a parent debt adjustment should be applied pursuant to Rule 25-14.004, F.A.C.

Staff recommends that the \$126,212,000 annual base rate increase should be held subject to refund pending a review and final determination of the appropriate calculation of the Bartow Repowering Project revenue requirements in PEF's base rate proceeding in Docket No. 090079-EI.

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<sup>7</sup> Order No. PSC-09-0283-FOF-EI, issued April 30, 2009, in Docket No. 080317-EI, In re: Petition for rate increase by Tampa Electric Company, pages 75-79.

**Issue 4:** Should the Commission approve PEF's revised tariff sheets?

**Recommendation:** The tariff sheets as filed reflect both the Project increase and the interim increase requested in Docket No. 090079-EI. If the Commission denies or modifies the interim increase request, PEF should file revised tariff sheets reflecting the Commission's decision in Docket No. 090079-EI, and the Project increase approved in this docket. The appropriate tariff sheets reflecting the Project increase should be approved and the resulting increase in revenues held subject to refund pending the outcome of the hearing in Docket No. 090079-EI. If the Commission denies the Project increase, this issue is moot. (Draper)

**Staff Analysis:** PEF witness Toomey attached PEF's proposed tariff sheets to his testimony as Exhibit PT-4 to reflect both the Project base rate increase factor of 9.12 percent and the 1.70 percent increase requested for interim relief in Docket No. 090079-EI, PEF's base rate proceeding. If the Commission denies or modifies the interim increase request, PEF should be directed to file revised tariffs to reflect the Commission's decisions within thirty days of the vote. If an increase is approved, the increase factor will apply to the customer charge, non-fuel energy charge, demand charge, delivery voltage credits, power factor, and premium distribution service charges. The increase factor will not apply to any load management, interruptible, or curtailable credits.

If approved, the 9.12 percent increase factor would increase the 1,000 kwh residential bill from the current \$122.79 to \$126.90, or by \$4.11.

Staff recommends that if the Commission approves PEF's request to increase base rates by \$126,212,000 annually, PEF's appropriate tariff sheets reflecting the Project increase should be approved subject to refund pending a final hearing in PEF's base rate proceeding.

**Issue 5:** What is the appropriate effective date for implementing the \$126,212,000 annual base rate increase?

**Recommendation:** If the Commission approves PEF's request to increase base rates by \$126,212,000 annually, the effective date for implementing the base rate increase is the first billing cycle in July 2009. Starting with the first billing cycle in June 2009, PEF should include bill inserts to notify its customers of the base rate increase. If the commercial operation of the Bartow Repowering Project is delayed from the projected June 1, 2009, date, the effective date should be moved to the first billing cycle 30 days following the commercial operation in-service date. (Draper)

**Staff Analysis:** PEF requested to adjust base rates with the first billing cycle in July 2009. The date is based on PEF's expectation that the Project will begin commercial operation on June 1, 2009. Implementing the increase with the first billing cycle in July 2009 ensures that no usage is billed at the higher base rates prior to the commercial operation of the project.

Starting with the first billing cycle in June 2009, PEF should include bill inserts to notify its customers of the base rate increase. PEF should provide staff a copy of the bill insert for prior review. Staff recommends that if the commercial operation of the Project is delayed from the projected June 1, 2009 date, the effective date should be moved to the first billing cycle 30 days following the commercial operation in-service date.

**Issue 6:** What is the appropriate security to guarantee the amount collected subject to refund?

**Recommendation:** The appropriate security to guarantee the funds collected subject to refund is a corporate undertaking. (Maurey)

**Staff Analysis:** PEF has requested that all funds collected subject to refund be secured by a corporate undertaking. The criteria for a corporate undertaking include sufficient liquidity, ownership equity, profitability, and interest coverage to guarantee any potential refund. Staff reviewed the financial statements to determine if PEF can support a corporate undertaking. Based on an estimated six-month collection period, staff has determined the cumulative amount of revenues that may need to be protected is \$69.5 million. This amount consists of the relevant portion of the Company's request of \$63 million associated with the Project and the relevant portion of the interim rate increase for the six-month collection period of \$6.5 million. PEF's 2006, 2007, and 2008 financial statements were used to determine the financial condition of the Company. This analysis shows PEF has experienced a decline in its equity ratio in 2008, but the 42 percent equity ratio is still sufficient. The equity balance, while declining on a relative basis, is still significantly greater than the amount under consideration for a corporate undertaking. In addition, net income has been on average 5 times greater than the requested cumulative corporate undertaking amount. PEF's financial performance has demonstrated adequate levels of profitability, liquidity and interest coverage to offset the decline in the equity ratio.

Staff believes PEF has adequate resources to support a cumulative corporate undertaking in the amount requested. Based on this analysis, staff recommends that a cumulative corporate undertaking of \$69.5 million is acceptable. This brief financial analysis is only appropriate for deciding if the Company can support a corporate undertaking in the amount proposed and should not be considered a finding regarding staff's position on other issues in this proceeding.

**Issue 7:** Should this docket be closed?

**Recommendation:** Yes. If a protest is filed within 21 days of the issuance of the order, this tariff should remain in effect, with any revenues held subject to refund, pending resolution of the protest. Staff also recommends that if the order is protested, this docket should be consolidated with Docket No. 090079-EI, PEF's rate base proceeding, in the interest of administrative efficiency, and given the congruence between the issues and parties in the two dockets. If no timely protest is filed, this docket should be closed upon the issuance of a consummating order. (Fleming)

**Staff Analysis:** Yes. If a protest is filed within 21 days of the issuance of the order, this tariff should remain in effect, with any revenues held subject to refund, pending resolution of the protest. Staff also recommends that if the order is protested, this docket should be consolidated with Docket No. 090079-EI, PEF's rate base proceeding, in the interest of administrative efficiency, and given the congruence between the issues and parties in the two dockets. If no timely protest is filed, this docket should be closed upon the issuance of a consummating order.