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Subject: 060658-EI filing
Attachments: 060658 Prehearing Statement.doc

Electronic Filing

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b. Docket No. 060658-EI

In re: Petition on behalf of Citizens of the State of Florida to required Progress Energy Florida, Inc. to refund customers \$143 million

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

d. There are a total of 28 pages.

e. The document attached for electronic filing is Citizens' Prehearing Statement.

Thank you for your attention and cooperation to this request.

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DOCUMENT NUMBER-DATE

02162 MAR-9 5

FPSC-COMMISSION CI FRK

3/9/2007

ORIGINAL

In Re: Petition on behalf of Citizens of)
the State of Florida to require)
Progress Energy Florida, Inc. to)
refund customers \$143 million)
_____)

DOCKET NO. 060658-EI

Filed: March 9, 2007

CITIZENS' PREHEARING STATEMENT

The Citizens of the State of Florida, through the Office of Public Counsel, pursuant to the Orders Establishing Procedure in this docket, Order No. PSC-07-0048-PCO-EI, issued January 16, 2006, and Order No. PSC-07-0132-CPO-EI, issued February 15, 2007 hereby submit this Prehearing Statement.

I. WITNESSES:

Citizens will call the following witnesses:

Direct

Robert S. Sansom—Mr. Sansom discusses coal markets and delivery modes; the relative economics of Eastern bituminous and Powder River Basin subbituminous coals over time; the capability of Crystal River Units 4 and 5 to accept and burn a 50/50 blend of Powder River Basin and bituminous coals; the failure of PEF to switch from 100% bituminous to the 50/50 blend when Powder River Basin coal became more economical than bituminous coal (or bituminous-derived “synfuel,” also purchased by PEF) on a delivered basis; and the shortcomings of PEF’s coal procurement activities. He quantifies the additional charges PEF’s customers paid as a result of PEF’s failure to acquire and burn the most economical fuel available for CR4 and CR5 during 1996-2005.

Patricia Merchant— Mrs. Merchant discusses the calculation of the interest factor that should be added to the refund of excess fuel charges.

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Rebuttal

Robert S. Sansom—Mr. Sansom rebuts PEF's witnesses on the subjects of the cost and availability of Powder River coal during the period 1996-2005, and the adequacy of PEF's fuel procurement activities.

Joseph Barsin —Mr. Barsin rebuts PEF's claim that burning the 50/50 blend would have led to deratings relative to operations with 100% bituminous coal by establishing the ability of CR4 and CR5, as built, to operate at the same 5% overpressure condition, without limitation, that PEF attributes to the all-bituminous scenario.

David Putman—Mr. Putman testifies that, based on personal knowledge and experience, the safety issues posed by Powder River Basin coal can be handled successfully and at low cost with appropriate storage, handling, and clean-up precautions, and so are not an impediment to the opportunity for significant fuel savings it has afforded over time. He also testifies that existing blending and conveying systems serving Crystal River Units 4 and 5 are adequate to supply the 50/50 blend to the boilers in quantities needed to operate at 5% overpressure.

Stephen Smallwood, P.E.—Mr. Smallwood will testify that PEF had authority to burn the 50/50 blend under state Siting Act Conditions of Certification, and PEF increased the time and difficulty associated with maintaining or regaining that authority when it (a) elected not to perform a test burn of the 50/50 blend in addition to the bituminous-only stack test when the units first entered service and (b) omitted subbituminous coal from its application for its first federal Title V air permit in 1996.

Dan Lawton—Mr. Lawton will testify that (1) because it allowed utilities to begin collecting costs from customers close to the time it incurred the costs, the FPSC established that it would not rule on the prudence of costs until it received all relevant facts; (2) other OPC witnesses have asserted in this case relevant facts that bear on the prudence issue; (3) investors cannot expect the FPSC to permit collection of imprudent costs-- if the investors or credit markets are unhappy over a disallowance of such costs,

they will be unhappy with management, not the FPSC; (4) to allow the utility to collect on the basis of information insufficient to prove prudence, then later prevail on the grounds too much time has elapsed before the relevant facts were presented by others, would send the message that superficial presentations will shelter the utilities from scrutiny.

Todd H. Bohrmann—Mr. Bohrmann, who while on the FPSC's technical staff had lead responsibility for the fuel cost recovery proceeding, will testify that in his experience the process worked in practice just as the FPSC had delineated it in orders; that is, Staff had insufficient time and information to conduct a full prudence review prior to the time the utility commenced collection, and he always understood when he recommended approval of a request to begin collections or to approve a true-up calculation that such approval would not constitute a final determination of prudence; the issue would remain subject to a later showing of relevant facts bearing on prudence that had not been presented by the utility.

II. EXHIBITS

Through their witnesses, Citizens will sponsor the following exhibits:

Robert S. Sansom

(RS-30) PRB Analysis Regulated Coal by PFC's Dennis Edwards which is an October Estimate of 1996 EFC Affiliate Profits.

(RS-31) an Affiliates Profit Table.

(RS-32) Back Calculated FOB Mine Prices from Exhibit DMD-13, p. 1.

(RS-33) Davis/Heller Rates v. Market Rates.

(RS-34) Transportation Miles.

- (RS-35) Bids by western railroads to ship PRB coal to Mobile and river docks.
- (RS-36) October 15, 1998 Kennecott letter offering PRB coal to PFC.
- (RS-37) 41 Plants East of Mississippi River Using PRB Coal in 1996.
- (RS-38) TECO data on PRB Prices.
- (RS-39) September 14, 2004 email from Mr. Pitcher Spot Barge Purchases declaring Massey coal is more economical if moved by direct rail to Crystal River.
- (RS-40) Sansom Photographs from February 22, 2007 visit to Crystal River plant.
- (RS-41) Crystal River Coal Yard Layout.
- (RS-42) PE's notes on a 2005 conversation with Mr. Hatt.
- (RS-43) 2004 PRB Bid Quantities to PFC for 2005-2007 Coal.
- (RS-44) PRB SO₂ Emissions vs. CAPP SO₂ Emissions.
- (RS-45) Revised SO₂ Overpayments of Ratepayers by Sansom.
- (RS-46) Proposed Agenda, March 2005, PFC Synfuels Meeting with Davis and Weintraub participating.
- (RS-47) Mr. Pitcher's 2001 Black Hawk Synfuels Offer to Mr. Edwards.
- (RS-48) Undated PFC Marketing and Trading "Indication of Product Availability".

Joseph Barsin

- (JAB-1) Resume
- (JAB-2) RFP - March 10, 1977

- (JAB-3) B & V Proposal – April 15, 1977
- (JAB-4) B & V Contract
- (JAB-5) Boiler Design Considerations – J. A. Barsin
- (JAB-6) Design Blend
- (JAB-7) Experience with high sodium subbituminous coals
- (JAB-8) Experience with High Sodium Lignites
- (JAB-9) Contract summary
- (JAB-10) Acceptance testing results
- (JAB-11) B & V Coal Handling
- (JAB-12) Coal conveying dust abatement
- (JAB-13) PEF RFQ for conveyors
- (JAB-14) SILO unloading
- (JAB-15) PRB 2004 test burn
- (JAB-16) Benefits of PRB
- (JAB-17) System design specification
- (JAB-18) Coal handling system analysis
- (JAB-19) Precipitation specs

Stephen Smallwood

- (SS-1) Resume
- (SS-2) Excerpts, PEF's Answers to OPC's Fourth Interrogatories
- (SS-3) Application for construction permit to conduct test burn

Dan Lawton

(DL-1) Resume

III. STATEMENT OF GENERAL POSITION

Recognizing that a projected fuel cost recovery clause allows utilities to begin collecting costs of fuel from customers before it has sufficient information on which to determine the prudence of those costs, in Order Nos. 12645, 13452 the Commission addressed the manner in which it would protect customers' interests following the initial approval of collections. The Commission adamantly rejected efforts to limit its ability to consider prudence issues to a specific time frame, and instead stated it would not adjudicate prudence until all relevant facts were before it. The Commission noted the "trade-off" between the benefit to utilities of collections near in time to the incurrence of costs, on the one hand, and the uncertainty attached to the possibility of a later finding of imprudence, on the other. The principle and the message were clear. The burden of proof is on the requesting utility; all of the information is in the possession of the utility; if the utility decides to present less than all relevant facts bearing on prudence, the consequence—the "trade-off"—will be a degree of uncertainty and the possibility of a disallowance in the event Staff or parties subsequently present evidence of imprudence. That is the structure that PEF accepted when it submitted information in support of its requests that was incomplete, that Citizens invoke with their Petition, and that the Commission must apply to the decision in this case.

In this case Citizens' evidence proves that, between 1996 and 2005, PEF purchased bituminous coal and "synfuel" for Crystal River Units 4 and 5—much of it from affiliates-- when ratepayers had paid for the capability to burn a 50/50 blend of Powder River Basin subbituminous and bituminous coals, and when PEF knew, or should have known, that Powder River Basin coal had become more economical than bituminous coal in the early 1990s. Further, OPC's evidence will show that in 1996 PEF took steps to surrender its environmental authority to burn subbutiminous coal at the same time other southeastern utilities were converting to Powder River Basin coal to lower customers'

fuel costs. Later, when in discovery OPC learned that PEF had not selected the lowest bidder to its coal RFP—a fact not disclosed in PEF’s own presentation-- PEF justified its award to others, including its affiliate, on the grounds it is not authorized to burn PRB coal. The decision to allow the ability to burn subbituminous coal to lapse after having spent ratepayers’ money to build a unit capable of burning the fuel, and the attempt to rely on that very imprudence to justify buying higher priced fuel, are relevant facts that, in conjunction with the shift in relative economics of PRB and bituminous coals, constitute a basis for requiring PEF to refund the extra costs that customers bore during 1996-2005.

PEF’s efforts to discount its ability to have operated CR4 and CR5 at the same high output levels with the blend as it experienced with bituminous coal simply are not credible. PEF specified the 50/50 PRB/bituminous blend as the “design basis” of the units, and Black & Veatch, Babcock & Wilcox, and other vendors conservatively designed the units around the assumption they would be fueled by n the blend. PEF specified units that are capable of operating at “maximum continuous capability” (5% overpressure) without limitation when operating with the blend, and accepted the units as meeting its specifications without first testing them with the blend. PEF’s own documents establish that the ability of the boiler/steam generator to support operations at 5% overpressure and the maximum MW capability on a sustained basis WHEN USING THE 50/50 DESIGN BASIS BLEND OF COALS was always a fundamental design criterion. It was part of Black and Veatch’s original proposal; it was incorporated in the utility’s contract documents; it is codified in the design manual that contains the unit’s specifications and operating parameters.

PEF cannot now bootstrap its own decision to not test the unit with the design basis coal into an opportunity to speculate that the units might not have met the guaranteed standard of performance. Either PEF was so confident the units would burn the mixture at the PEF-specified maximum output successfully that it regarded the test as unnecessary, in which case its current claims are contradictory, self-serving, and lacking in credibility, or PEF imprudently waived the opportunity to test the units when it could

enforce vendor commitments, in which case the Commission should shield customers from all higher costs resulting from the imprudence.

Over time numerous utilities have successfully burned hundreds of millions of tons of PRB coal. Safety concerns associated with PRB coal were and are manageable with appropriate storage and handling protocols and meticulous housekeeping. Because the capability to burn the 50/50 mixture had been expensively designed into the units at the outset, during 1996-2005 the substantial fuel savings calculated by Robert Sansom were available to PEF and its customers at very low additional cost.

Citizens' witness Robert Sansom calculates the overcharges for each year during the period 1996-2005. For the full ten year period that is the subject of the Petition, the overcharges total \$134.5 million, exclusive of interest.

IV. ISSUES AND POSITIONS

ISSUE 1: During the period of 1996 through 2005, were there available to PEF sources of subbituminous coal from the Powder River Basin ("PRB coal") that were more economical on a delivered basis than the 100% bituminous coal and the blend of bituminous coal and bituminous-derived synthetic fuel ("synfuel") that PEF purchased and burned at Crystal River Units 4 and 5 during the period? If so, did PEF know, or should PEF have known, of the availability of this more economical fuel at the time?

OPC: Yes. In the early 1990s, the advent of rail-on-rail competition for the transportation component and the opening of PRB coal deposits with higher Btu content led to a reversal of the former economic relationship, such that PRB coal became the more economical fuel. Numerous utilities began shifting to PRB coal to lower their fuel costs. Some modified and converted units that, unlike CR4 and CR5, were not originally designed to burn PRB coal. The information regarding the changed economics, and the availability of higher-Btu PRB coal, was disseminated widely through the coal markets

and utility industry. It was known, or should have been known, to PEF at the time.
(Sansom)

ISSUE 2: Could PEF have burned the blend of 50% PRB coal and 50% bituminous coal that CR4 and CR5 were designed to burn in sufficient quantities so as to have generated the same output of electricity that PEF generated during the period with bituminous coal and a blend of bituminous coal and synfuel?

- a. As specified by PEF's predecessor, were the units capable of generating the same output that PEF experienced with bituminous coal and bituminous/synfuel while operating with the six pulverizers (per unit) supplied by Babcock & Wilcox under the contract?

OPC: Yes. The ample capacity of the existing pulverizers is shown in PEF's design manual documents. In fact, the boilers/turbines were designed with the capacity to operate at maximum continuous capability (5% overpressure), the same maximum criterion to which PEF refers when describing operations with bituminous coal, with only *five* of the pulverizers in operation. Plus, this was the original design criterion built into the unit when 8125 Btu/pound PRB coal was anticipated. That PRB coal having 8800 Btus per pound is now available increases the already significant cushion that was built into the pulverizer capacity. While there is a space to add a seventh pulverizer, it was never needed to enable the units to generate at maximum continuous capability (5% overpressure) on an unlimited basis. PEF chose to test perform the units' six pulverizers with bituminous coal rather than the design blend. PEF accepted the units and released B&W from its guarantees on that basis. PEF cannot now bootstrap its decision to not test perform the units using the design blend into an opportunity to speculate that the performance standard might not have been met. (Barsin, Sansom)

- b. As specified by PEF's predecessor, were the boilers, precipitators, and other components of CR4 and CR5 capable of accommodating or mitigating the combustion properties of the PRB/bituminous blend successfully during operations?

OPC: Yes. Contrary to claims by PEF's witness, the technical literature, including technical articles written by Citizens' expert witness, establish that the combustion characteristics of PRB coal blends were well known when CR4 and CR5 were designed, as were the means and methods of mitigating those characteristics; and suppliers of CR4 and CR5 components could and did incorporate the design features necessary to enable the boilers, precipitators, and other components of CR4 and CR5 to burn the blend successfully. The ability to utilize the 50/50 "design basis" blend on a sustained basis without excess fouling and slagging was part of the guarantee provided to PEF by the supplier. In fact, the combustion ash index to which the units were designed, "severe slagging/severe fouling," went beyond (i.e. were more conservative) than required to handle the 50/50 "design basis" blend of coals successfully. PEF chose to test perform the units using bituminous coal, not the design fuel blend, and accepted the units and released B&W from its guarantee obligations on that basis. PEF cannot now bootstrap that management decision by now speculating the units might not have met the very capability it put into the contract specifications and accepted from the provider. (Sansom)

- c. As specified by PEF's predecessor, were the coal handling and conveying systems at CR4 and CR5 capable of supplying to the boilers of CR4 and CR5 the 50/50 blend of PRB and bituminous coals in quantities sufficient to generate the same output that PEF experienced with bituminous coal and a blend of bituminous coal and synfuel during the period?

OPC: Yes. Black & Veatch designed the coal handling system, as it designed the entire CR4 and CR5 project, around the assumption that the boilers would be burning the 50/50 blend as well as the specification that the units must be able to operate at 5% overpressure condition on a sustained basis. The capacity and speed of the system were designed to

deliver the quantities of blended coal necessary to meet this performance standard, which is the same “maximum continuous capability” level at which PEF claims to have operated the units when burning bituminous coal. Demonstrably, the systems had, and have, ample capacity, including redundancy, for the purpose. Having decided to test perform the units with bituminous coal only, PEF cannot now bootstrap that decision to speculate that the system it accepted might not have met the design standard. (Sansom)

- d. Was PEF capable of blending the PRB and bituminous coals into the 50/50 mixture on site?

OPC: Yes. In fact, PEF’s predecessor, Florida Power Corporation, mandated such an ability in the specifications for the units. The system consisting of two stacker/reclaimers, belt scales and variable speed feeder belts, provides a fully adequate, controllable system for blending the coals. The stacker/reclaimers need only inexpensive washdown features to be added. Further, the boilers have sensors and response mechanisms which automatically increase or decrease the Btus being delivered to the boilers as needed to sustain the desired output. Having tested the units with bituminous coal, PEF cannot now bootstrap that decision to speculate that the system it accepted for the purpose of blending might not have met the design standard. PEF’s documents show PEF blended syngas and bituminous coal on the 50/50 basis at Crystal River. (Sansom)

ISSUE 3: Did PEF prudently design and implement its fuel procurement activities so as to solicit from the market the most economical fuel for CR4 and CR5?

OPC: No. PEF failed to design and implement its procurement activities in a manner that would secure for ratepayers the benefits of lower costing PRB coal—a benefit for which they were paying in the form of the enhanced capabilities of the units. (Sansom)

ISSUE 4: Did PEF take those prudent measures necessary to position itself to acquire and burn the most economical coal for the benefit of its customers?

OPC: No. Had PEF performed a stack test with the blend when the units were built and/or at the time it applied for its first federal Title V air permit, it could have been positioned operationally and in terms of needed regulatory authority to utilize the flexibility for which the customers were paying to lower their fuel costs timely during 1996-2005. It was incumbent on PEF to take steps necessary to enable the utility to protect its customers' interests timely. PEF should have conducted a performance test of the units with the 50/50 blend during the first year of operations, when its contractual guarantees were in force. In any event, PEF should have responded to the market timely when a change in coal market economics required a shift to the blend to deliver service to customers at lowest fuel costs. A timely response would include any stack tests the utility deemed to be necessary to enable it to meet its obligation to supply electrical power at the lowest reasonable cost, including fuel cost. (Sansom)

ISSUE 5: a. Did the conditions of certification issued by the Governor and Cabinet provide PEF's predecessor with the authority to burn the 50/50 blend of PRB and bituminous coals in CR4 and CR5?

OPC: Yes. The Conditions of Certification permitted PEF to burn the 50/50 blend as long as it did not exceed emissions limitations relating to SO₂, NO_x, and particulate emissions. This is the same authority PEF received with respect to bituminous coal. In fact, in 2005 PEF represented to the Florida Department of Environmental Protection that the Conditions of Certification encompassed the 50/50 blend; thus, PEF's own documents show that PEF regarded the conditions of certification as permitting operations with the design basis blend. Further, the emission standards imposed by the Governor and Cabinet did not differ from those applicable to units of that era generally; nor do the standards differ from those proposed by PEF, the applicant. The units were designed and guaranteed by the vendors to meet the existing environmental standard when burning the

design basis blend of coals. PEF chose to test perform the units with bituminous coal, and accepted the units and released the vendors from their guarantees on that basis. PEF cannot now bootstrap that management decision into an opportunity to question the ability of the units to have met that operational standard. (Smallwood)

b. Did PEF and its predecessor prudently and timely acquire and maintain the necessary authority from environmental agencies to burn the 50/50 blend of PRB and bituminous coals in CR4 and CR5, so as to position themselves to use the most economical fuel for the benefit of customers?

OPC: No. Having secured from the Governor and Cabinet the authority to burn the 50/50 “design basis” blend of PRB and bituminous coals in CR4 and CR5, in 1996—at a time when other utilities already had begun shifting to PRB coal to lower fuel costs—PEF omitted subbituminous coal from the list of fuels for which it wanted authority to burn in the units when it applied for its first federal Title V permit. Unlike the conditions of Certification issued under the state Siting Act, the Title V permit is fuel-specific. PEF should have taken the measures necessary to maintain its authority to burn subbituminous coal in CR4 and CR5. Instead, it omitted any reference to subbituminous coal in its application. Nor did it seek to amend or modify its application during the four years it was pending—although it modified its application to include “synfuel” to be purchased from affiliates. PEF’s omissions and failures evince an imprudent disregard for its customers’ interests, and contributed to a delay in its ability to burn PRB coal in CR4 and CR5 once it belatedly became interested in doing so. (Sansom)

ISSUE 6: Do the properties of PRB coal that cause it to be dustier and more hazardous to store and handle as compared to bituminous coal constitute a basis for concluding that PEF should not have purchased the blend during 1996-2005, or were such safety considerations manageable with appropriate storage and handling protocols such that prudent management would have pursued the fuel savings for its customers that burning the blend would have provided?

OPC: Over time, numerous utilities have burned hundreds of millions of tons of PRB coal and coal blends successfully. In the hands of a competent management, PRB coal and coal blends can be handled safely with the right handling and storage methods, dust suppression measures, compaction of coal piles, and housekeeping procedures, none of which presented a significant capital investment or operational expense when related to the fuel savings that could have been achieved during 1996-2005. Further, many of the systems needed for appropriate handling of PRB coal were designed and constructed when CR4 and CR5 were new, but were removed by PEF or allowed to deteriorate. The additional costs necessary to address the properties of PRB coal would have been minimal in relation to the substantial fuel savings that could have been accomplished. (Sansom)

ISSUE 7: Were the opportunities to save fuel costs by burning the 50/50 blend of PRB and bituminous coals outweighed by the capital investments and increased O&M expense that would have been necessitated, or were any such outlays of a magnitude that prudent management would have regarded as justified by the savings to be achieved?

OPC: The additional capital necessary to render the units capable of burning the 50/50 design basis blend of PRB and bituminous coals was expended at the time the units were designed and constructed. The only additional O&M would have been modest enhancements to safety systems—but those which PEF removed or allowed to deteriorate could not be reflected in customers' rates. The ability of the units to accommodate a blend containing up to 70% subbituminous coal was recognized by Sargent & Lundy, a consulting engineering firm engaged by PE prior to the time of OPC's petition. S & L principal technical findings are confirmed by OPC witness Joseph Barsin. (Barsin)

ISSUE 8: (combined legal and factual issue) Under the circumstances of this case, does the Commission have the authority to grant the relief requested by Citizens?

Yes. OPC is invoking the procedures and principles laid down by the Commission in Order Nos. 12645 and 13452--nothing more, nothing less. The burden of proof is on PEF. PEF was on notice that if it did not present all facts relevant to the prudence of its procurement actions (and inactions), the Commission would reserve the ability to consider evidence of imprudence brought by others. OPC has presented relevant facts that were not supplied by PEF. Under the existing regime, a utility needs to supply all relevant facts or accept it will expose to uncertainty associated with the possibility of a future disallowance. To require OPC, Staff, or another party to extract from the utility the information bearing on prudence or imprudence that the utility did not present and place it before the Commission by a date certain would effectively and improperly transfer the burden of proof from the requesting utility to the intervening party. Also, to change the equation now would send the message that if a utility submits incomplete information, it enhances the possibility that its procurement activities will escape close scrutiny. (Sansom)

ISSUE 9: Based on the resolution of the above issues, were the fuel costs associated with the operation of CR4 and CR5 during 1996-2005 prudently incurred and reasonable in amount? If not, by what amount did PEF and its predecessor overcharge its customers?

OPC: PEF was imprudent, and charged to customers' fuel costs associated with CR4 and CR5 that were unnecessarily high. OPC witness Sansom has calculated the overcharges on an annual basis for the period 1996-2005. For the period that is the subject of the Petition, the total is \$134.5 million.

ISSUE 10: What is the appropriate method of calculating interest on any overcharges determined by the Commission in this case?

OPC is willing to stipulate to the adjustment to OPC witness Patricia Merchant's methodology sponsored by PEF witness Lori Cross.

PEF'S PROPOSED LIST OF ISSUES

Preliminary Objection: OPC objects to the wording of many of PEF's proposed issues on the grounds that they ask whether a particular matter was "reasonable" or whether PEF "reasonably" considered a subject. As worded, there is no mention of the prudence standard. The issue appears to imply that if a matter was considered, the consideration of it was "reasonable"—without broaching the different standard of whether the decision made was prudent under the circumstances. Because the problem occurs in so many of PEF's issues, OPC makes this general objection applicable to all such issues.

ISSUE 1: During the period of 1996 through 2005, were there available to PEF sources of sub bituminous coal from the Power River Basin suitable for use at Crystal River Unit 4 (CR4) and Crystal River Unit 5 (CR5) that were more economical than that purchased for CR4 and CR5 and that PEF knew or should have known about?

OPC: This is duplicative of OPC's list, item ___.

ISSUE 2: During the period of 1996 through 2005, were there available to PEF sources of foreign and Colorado bituminous coal suitable for use at Crystal River Unit 4 (CR4) and Crystal River Unit 5 (CR5) that were more economical than that purchased for CR4 and CR5 and that PEF knew or should have known about?

OPC: Yes. Foreign and Colorado coal was available and cheaper than eastern bituminous coal and/or synfuel. To that extent, OPC witness agrees with Staff witness Windham. However, during the period 1996-2005 Powder River Basin coal generally was cheaper than foreign and Colorado bituminous coal. (Sansom)

ISSUE 3: Did PEF reasonably consider factors other than just the actual commodity price for coal in its coal procurement decisions for CR4 and CR5 during the period of 1996 through 2005?

OPC objects to the issue as currently stated, because the term phrase “factors other than just the actual commodity price for coal” is vague and ambiguous.

ISSUE 4: Did PEF reasonably consider the adequacy and reliability of supply of coal for CR4 and CR5 in its coal procurement decisions for CR4 and CR5 during the period 1996 through 2005?

OPC: If the issue and PEF’s position on the issue are designed to assert that the supply of Powder River Basin coal was inadequate or unreliable, then OPC states that there is no evidence that any such consideration played any part of PEF’s failure to purchase PRB coal at the time; further, the supply was adequate and reliable, and any view to the contrary would have been contradicted by known facts and imprudent on the part of management. (Sansom)

ISSUE 5: Did PEF reasonably consider the amount of coal needed for burns, inventory levels, and the amount of coal under contract in determining the quality of coal that PEF needed to procure for CR4 and CR5 during the period of 1996 through 2005?

OPC: There is no evidence indicating that such considerations played any part in PEF’s failure to purchase PRB coal at the time. Further, PEF’s own documents demonstrate that the coal under contract could have economically been moved from water delivery to rail delivery. Finally, even if the contracts presented an obstacle, which OPC disputes, prudent management would have moved to renegotiate the contract so that it could secure the dramatic fuel savings that could be accomplished by burning the blend of coals the units were designed to burn. (Sansom)

ISSUE 6: In evaluating coal purchasing options, was PEF reasonable in relying on the waterborne proxy rates established by the Commission for the water transportation costs for coal delivered to CR4 and CR5 by water 1996 through 2005?

OPC: No. To the extent that PEF considered the matter, it was mistaken in assuming and applying a “waterborne proxy” to PRB coal. PEF never requested, and the Commission never approved, a proxy to be applicable to either PRB coal or the route it would travel. (Sansom)

ISSUE 7: Was PEF reasonable in using an evaluated cost or busbar cost in PEF’s evaluation of RFP responses during the period 1996 through 2005?

OPC: There is no evidence supporting the contention that PEF used an evaluated cost or busbar cost as the basis for its decisions regarding RFP responses at the time during 1996-2005. Even if it had, a properly performed evaluation would have demonstrated that PRB coal was the most economical choice for CR4 and CR5. (Sansom)

ISSUE 8: Was PEF evaluated cost or busbar cost methodology reasonable during the period 1996 through 2005?

OPC: There is no evidence supporting the contention that PEF used an evaluated or busbar cost analysis as the basis for its decisions in awarding contracts following RFPs in 1996-2005. In any event, a reasonable methodology would have demonstrated that PRB coal was the most economical choice during the period. (Sansom)

ISSUE 9: Did PEF reasonably consider potential delivery constraints and delays in making coal procurement decisions for CR4 and CR5 during the period of 1996 through 2005?

OPC: There is no evidence supporting the contention that PEF considered delivery constraints and delays at the time it made coal procurement decisions during 1996-2005. In any event, a decision based on anticipated constraints would have been imprudent under the circumstances at the time. (Sansom)

ISSUE 10: Was PEF's practice of conducting test burns for coal that was not previously burned at CR4 and CR5 that deviated from PEF's coal specifications reasonable during the period of 1996 through 2005?

OPC: Office of Public Counsel objects to the issue as currently phrased. “. . .that deviated from PEF's coal specifications” is vague, unclear, and ambiguous. PEF's predecessor prescribed to the designers and builders of CR4 and CR5 the 50/50 blend of PRB/bituminous coals they were to assume as the basis for designing the units. PEF included in RFPs specifications for PRB coal that respondents met when they submitted bids. Subject to the objection, and without waiving it, OPC states that this is an example in which a practice may be “reasonable” but its implementation “imprudent.” The units were designed to burn the 50/50 blend of PRB and bituminous coals. The purpose was to provide flexibility to PEF. Yet, PEF did not perform a stack test with the blend at the time the units were completed; nor did it perform a stack test at the time it applied for its first Title V air permit. Both omissions were imprudent, for reasons stated more fully in OPC's response to PEF's Issue 11. (Sansom)

ISSUE 11: Did PEF reasonably conduct test burns during the period of 1996 through 2005?

OPC: PEF's practice, as implemented, was imprudent in the extreme. PEF elected not to perform a test burn or stack test of the 50/50 blend at the time the units were completed. In addition to proving the design capabilities of the units, such a test burn would have facilitated and streamlined its ability to maintain the authority to burn the PRB/bituminous blend. PEF also elected to forgo including subbituminous coal in its first application for the then new federal Title V air permit. A limited stack test of the

blend, coupled with the inclusion of subbituminous coal among the fuels for which PEF sought authority to burn under the Title V permit, would have continued the authority to burn PRB coal that lapsed when the Title V permit became effective in January 2000. (Sansom)

ISSUE 12: In evaluating coal purchasing options, did PEF reasonably consider the impact on the quality of coal at CR4 and CR5 resulting from the shipment of that coal from the mine to the plant during the period of 1996 through 2005?

OPC: There is no evidence supporting the contention that PEF considered this at the time it was making its procurement decisions. Assuming for the sake of argument that it did so, then to have forgone the opportunity to save customers many millions of dollars in fuel costs on the basis of possible minute changes in coal quality in transit would have been imprudent. (Sansom)

ISSUE 13: In evaluating coal purchasing options, did PEF reasonably consider the safety of PEF equipment and personnel on handling coals at Crystal River during the period of 1996 through 2005?

OPC: There is no evidence supporting the contention that safety was a consideration in failing to purchase PRB coal at the time procurement decisions were made in 1996-2005. Even assuming, for the sake of argument, that management considered safety, it would have been imprudent to forgo the opportunity to save customers many millions of dollars in fuel costs. PRB coal can be handled and stored safely with dust suppression, compaction of coal piles, and frequent washdowns. In fact, Black and Veatch designed and constructed many of the safety systems necessary for the safe handling of PRB coal. (Sansom)

ISSUE 14: In evaluating coal purchasing options, did PEF reasonably consider the costs to blend coals on site at Crystal River during the period of 1996 through 2005?

OPC: There is no evidence supporting the contention that the cost of blending coals entered the decision making process during procurement activities in 1996-2005. There is ample evidence that PEF's predecessor, Florida Power Corporation, specified to the designers and builders of CR4 and CR5 that the units be equipped with blending facilities on site. Even if one accepts, for the purpose of argument, that PEF considered blending costs at the time, to have forgone the opportunity to save customers many millions of dollars in fuel costs because of the minuscule incremental costs of blending would have been imprudent. (Sansom)

ISSUE 15: In evaluating coal purchasing options, did PEF reasonably consider impacts on internal plant components of burning coals at CR4 and CR5 during the period of 1996 through 2005?

OPC: There is no evidence to support the contention that "impacts on internal plant components" was a consideration at the time procurement decisions were being made during 1996-2005. Accepting for the sake of argument that "impacts" were a consideration, it would have been imprudent in the extreme for PEF to have forgone the opportunity to lower costs with a blend of PRB and bituminous coals, because PEF paid for enhanced units that specifically were designed to accommodate the blend successfully. PEF accepted those units as meeting its specifications. Therefore, even if it would have been "reasonable" for the subject to occur to PEF, to have based a decision on the possibility of such impacts, in light of the elaborate and extreme measures its designers and contractors had gone to prevent such impacts, would have been imprudent. To spend the extra money on units having that capability, only to abandon the capability based on impacts the utility paid its vendors to avoid, would have been imprudent in the extreme.

ISSUE 16: In evaluating coal purchasing options, did PEF reasonably consider potential derates from historical gross capacity and energy production at CR4 and CR5 during the period of 1996 through 2005?

OPC: There is no evidence supporting the contention that possible derates played any part of the decision making during procurement activities of 1996-2005. Assuming, for the sake of argument, that the subject arose. Even if addressing the possibility would have been reasonable, it would have been imprudent for PEF to have based a decision to forgo millions of dollars in lower fuel costs on that basis, because PEF (its predecessor) specified, and the designers and vendors built, units capable of maintaining maximum continuous capability (the 5% overpressure condition) without limitation—meaning the units were as capable of maximum output when burning the 50/50 blend as they were when burning only bituminous coal.

ISSUE 17: Would the burning of a 50/50 PRB/bituminous blend of coals in CR4 and CR5 during 1996-2005 have resulted in a loss of MW output as compared to operations using bituminous coal only, as claimed by PEF.

OPC: No Position at this time.

ISSUE 18: Could the use of PRB coals at CR4 and CR5 have had an impact on the licensure and operation of Crystal River Unit 3, PEF's nuclear unit during the period of 1996 through 2005?

OPC: There is no evidence that proximity to CR3 played any part of the decision making on procurement activities during 1995-2006. CR3 was built prior to the design and construction of CR4 and CR5. Had CR3 been a legitimate issue, prudent management would have undertaken to resolve that issue before spending customers' money on the more expensive, PRB-capable units. Further, PEF has applied for a permit to burn PRB

coal at CR4 and CR5, so PEF must believe any issues associated with CR3 can be navigated. If, for the sake of argument, there may have been questions posed as a result of proximity to CR3, prudent management would have initiated the process to resolve them as early as possible, so that it would have been positioned to take advantage of opportunities made possible by the flexibility to burn PRB coal in addition to bituminous coal.

ISSUE 19: Did PEF act prudently in purchasing coal for CR4 and CR5 beginning in 1996 and continuing through 2005?

OPC: No. Prudent management would have taken advantage of the opportunity afforded by the flexibility it had purposely designed into CR4 and CR5. Prudent management would have acted on the same information that led other utilities at the time to shift to PRB coal to save customers money—the same information that was available to PEF at the time. (Sansom)

ISSUE 20: If the Commission determines that PEF acted imprudently in its CR4 and CR5 coal purchases during the time period of 1996 through 2005, should PEF be required to refund customers for any related excess costs and excess SO₂ allowance costs?

OPC: Yes.

ISSUE 21: If the Commission determines that PEF should be required to refund customers for excess costs and excess SO₂ costs incurred to operate CR4 and CR5 from 1996 to 2005, what amounts should be refunded?

OPC: \$134.5 million, plus interest. (Sansom)

ISSUE 22: What is the appropriate methodology for calculating the interest, if any, associated with any refund required in this docket?

OPC: This is duplicative of a staff item. OPC is willing to stipulate to the adjustment to OPC's original methodology proposed by PEF's witness.

ISSUE 23: What amount of interest associated with excess coal costs and excess SO2 costs, if any, should be refunded to customers?

OPC: To be provided

ISSUE 24: If the Commission determines that PEF should be required to refund customers for coal purchase on CR4 and CR5, how and when should such refund be accomplished?

OPC: The refund should begin as quickly as practicable. The time frame should be structured so as to balance the objective of returning the money to customers quickly with the need to avoid impacts on earnings so severe as to constrain PEF's ability to provide quality service or obtain needed financing. OPC is open to further discussions of this subject consistent with these principles.

ISSUE 25: If the Commission determines that PEF willfully violated any lawful rule or order of the Commission or any provision of Chapter 366, Florida Statutes, should the Commission impose a penalty on PEF?

OPC: No position at this time.

ISSUE 26: If the Commission determines to impose a penalty on PEF, what should be the amount of the penalty and how should it be imposed?

OPC: No position at this time.

Stipulated Issues

Citizens are prepared to stipulate to PEF's modification of Ms. Merchant's proposed methodology for the calculation of interest.

Pending Motions

Citizens have no pending motions at this time.

Pending Requests or Claims for Confidentiality

Citizens have no pending requests or claims for confidentiality.

Notice of Intent to Use Confidential Documents at Hearing

OPC may use the following confidential documents at hearing:

- (1) Unredacted version of Sargent & Lundy study

OPC reserves the right to supplement this list at a later time.

Objections to Qualifications of Witnesses as Experts

Depending upon the answers received during the deposition scheduled for the week of March 12, and clarification from PEF regarding the matters for which he is being offered as an expert, Citizens may object to the qualifications of PEF witness Rod Hatt, to the extent he is offered as an expert on matters other than the properties of and the proper handling and storage of subbituminous coal.

Requirements of Order Establishing Procedure

Citizens believe that we have complied with the requirements of the order establishing procedure.

Respectfully submitted,

s/Joseph A. McGlothlin
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DOCKET NO. 060658-EI
CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of foregoing Citizens' Prehearing Statement has been furnished by electronic mail and U.S. Mail on this 9th day of March, 2007, to the following:

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