

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Nuclear cost recovery clause.

DOCKET NO. 090009-EI  
ORDER NO. PSC-09-0604-PHO-EI  
ISSUED: September 4, 2009

Pursuant to Notice and in accordance with Rule 28-106.209, Florida Administrative Code (F.A.C.), a Prehearing Conference was held on August 20, 2009, in Tallahassee, Florida, before Commissioner Katrina McMurrian, as Prehearing Officer.

APPEARANCES:

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On behalf of Florida Power & Light Company (FPL)

R. ALEXANDER GLENN, ESQUIRE, JOHN T. BURNETT, ESQUIRE, Progress Energy Service Company, LLC, 299 First Avenue, N PEF-151, St. Petersburg, Florida 33701, JAMES MICHAEL WALLS, ESQUIRE, and DIANNE M. TRIPLETT, Carlton Fields, P.A., Post Office Box 3239, Tampa, Florida 33601-3239

On behalf of Progress Energy Florida, Inc. (PEF)

JOSEPH A. MCGLOTHLIN, ESQUIRE, and CHARLES J. REHWINKEL, ASSOCIATE PUBLIC COUNSEL, Office of Public Counsel, c/o The Florida Legislature, 111 West Madison Street, Room 812, Tallahassee, Florida 32399-1400

On behalf of Office of Public Counsel (OPC)

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On behalf of White Springs Agricultural Chemicals, Inc., d/b/a PCS Phosphate-White Springs (PCS PHOSPHATE)

JON MOYLE, JR., ESQUIRE, and VICKI GORDON KAUFMAN, ESQUIRE, Keefe, Anchors, Gordon, Moyle, PA, 118 North Gadsden Street, Tallahassee, FL 32312, and JOHN W. MCWHIRTER, JR., ESQUIRE, Post Office Box 3350, Tampa, FL 33601-3350

On behalf of The Florida Industrial Power Users Group (FIPUG)

DOCUMENT NUMBER-DATE

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FPSC-COMMISSION CLERK

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On behalf of the Southern Alliance For Clean Energy (SACE)

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On behalf of the Federal Executive Agencies (FEA)

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On behalf of the Florida Public Service Commission (STAFF)

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### **PREHEARING ORDER**

#### **I. CASE BACKGROUND**

In 2006, the Florida Legislature adopted legislation encouraging the development of nuclear energy in the state. Section 366.93, Florida Statutes (F.S.), directed the Commission to adopt rules providing for alternate cost recovery mechanisms that will encourage investor-owned electric utilities to invest in nuclear power plants. The Commission adopted Rule 25-6.0423, Florida Administrative Code (F.A.C.), which provides for a clause recovery proceeding annually to consider investor-owned utilities' requests for cost recovery for nuclear plants.

Both Florida Power & Light Company (FPL) and Progress Energy Florida, Inc. (PEF) petitioned the Commission for recovery of costs through the Nuclear Cost Recovery Clause (NCRC) on March 2, 2009. This is the second year of this newly established roll-over docket, which is set for hearing September 8-11, 2009. The Office of Public Counsel (OPC), the Florida Industrial Power Users Group (FIPUG), White Springs Agricultural Chemicals, Inc. d/b/a PCS Phosphate – White Springs (PCS-Phosphate), Southern Alliance for Clean Energy (SACE), and the Federal Executive Agencies (FEA) have each been granted intervention in this docket. On August 10, 2009, Prehearing Statements were filed by FPL, PEF, Staff, and all the intervenors except FEA.

#### **II. CONDUCT OF PROCEEDINGS**

Pursuant to Rule 28-106.211, F.A.C., this Prehearing Order is issued to prevent delay and to promote the just, speedy, and inexpensive determination of all aspects of this case.

III. JURISDICTION

This Commission is vested with jurisdiction over the subject matter by the provisions of Chapter 366, F.S. This hearing will be governed by said Chapter and Chapters 25-6, 25-22, and 28-106, F.A.C., as well as any other applicable provisions of law.

IV. PROCEDURE FOR HANDLING CONFIDENTIAL INFORMATION

Information for which proprietary confidential business information status is requested pursuant to Section 366.093, F.S., and Rule 25-22.006, F.A.C., shall be treated by the Commission as confidential. The information shall be exempt from Section 119.07(1), F.S., pending a formal ruling on such request by the Commission or pending return of the information to the person providing the information. If no determination of confidentiality has been made and the information has not been made a part of the evidentiary record in this proceeding, it shall be returned to the person providing the information. If a determination of confidentiality has been made and the information was not entered into the record of this proceeding, it shall be returned to the person providing the information within the time period set forth in Section 366.093, F.S. The Commission may determine that continued possession of the information is necessary for the Commission to conduct its business.

It is the policy of this Commission that all Commission hearings be open to the public at all times. The Commission also recognizes its obligation pursuant to Section 366.093, F.S., to protect proprietary confidential business information from disclosure outside the proceeding. Therefore, any party wishing to use any proprietary confidential business information, as that term is defined in Section 366.093, F.S., at the hearing shall adhere to the following:

- (1) When confidential information is used in the hearing, parties must have copies for the Commissioners, necessary staff, and the court reporter, in red envelopes clearly marked with the nature of the contents and with the confidential information highlighted. Any party wishing to examine the confidential material that is not subject to an order granting confidentiality shall be provided a copy in the same fashion as provided to the Commissioners, subject to execution of any appropriate protective agreement with the owner of the material.
- (2) Counsel and witnesses are cautioned to avoid verbalizing confidential information in such a way that would compromise confidentiality. Therefore, confidential information should be presented by written exhibit when reasonably possible.

At the conclusion of that portion of the hearing that involves confidential information, all copies of confidential exhibits shall be returned to the proffering party. If a confidential exhibit has been admitted into evidence, the copy provided to the court reporter shall be retained in the Office of Commission Clerk's confidential files. If such material is admitted into the evidentiary record at hearing and is not otherwise subject to a request for confidential classification filed with the Commission, the source of the information must file a request for confidential

classification of the information within 21 days of the conclusion of the hearing, as set forth in Rule 25-22.006(8)(b), F.A.C., if continued confidentiality of the information is to be maintained.

V. PREFILED TESTIMONY AND EXHIBITS; WITNESSES

Testimony of all witnesses to be sponsored by the parties and Staff has been prefiled and will be inserted into the record as though read after the witness has taken the stand and affirmed the correctness of the testimony and associated exhibits. All testimony remains subject to timely and appropriate objections. Upon insertion of a witness' testimony, exhibits appended thereto may be marked for identification. Each witness will have the opportunity to orally summarize his or her testimony at the time he or she takes the stand. Summaries of testimony shall be limited to five minutes.

Witnesses are reminded that, on cross-examination, responses to questions calling for a simple yes or no answer shall be so answered first, after which the witness may explain his or her answer. After all parties and Staff have had the opportunity to cross-examine the witness, the exhibit may be moved into the record. All other exhibits may be similarly identified and entered into the record at the appropriate time during the hearing.

The Commission frequently administers the testimonial oath to more than one witness at a time. Therefore, when a witness takes the stand to testify, the attorney calling the witness is directed to ask the witness to affirm whether he or she has been sworn.

The parties shall avoid duplicative or repetitious cross-examination. Further, friendly cross-examination will not be allowed. Cross-examination shall be limited to witnesses whose testimony is adverse to the party desiring to cross-examine. Any party conducting what appears to be a friendly cross-examination of a witness should be prepared to indicate why that witness's direct testimony is adverse to its interests.

VI. ORDER OF WITNESSES

The Order of witnesses is as follows:

**FLORIDA POWER & LIGHT**

<u>Witness</u>	<u>Proffered By</u>	<u>Issues #</u>
<b><u>Direct</u></b>		
Steven D. Scroggs	FPL	4-8A, 14-17
Rajiv S. Kundalkar	FPL	6,7, 9-13
Steven R. Sim	FPL	8, 8A, 9

<u>Witness</u>	<u>Proffered By</u>	<u>Issues #</u>
Winnie Powers	FPL	4, 6, 10-18
John J. Reed	FPL	4-8
William R. Jacobs, Jr., Ph.D.	OPC	7, 7A, 8, 8A, 11
Dr. Mark Cooper	SACE	8, 8A, 16, 17
Arnold Gundersen	SACE	8, 8A,
Lynn Fisher and David Rich (Joint Testimony)	Staff	7 and 7A
<b><u>Rebuttal</u></b>		
Steven D. Scroggs	FPL	7A, 8, 8A
Rajiv S. Kundalkar	FPL	11
Steven R. Sim	FPL	8, 8A, 9
Winnie Powers	FPL	1-3
John J. Reed	FPL	7A, 8
<b><u>PROGRESS ENERGY FLORIDA</u></b>		
<b><u>Direct</u></b>		
Will Garrett	PEF	19, 22, 25, 28, 29
Geoff Foster	PEF	1-3, 26, 27, 30-32, 32A-B
Jon Franke (adopting Huntington)	PEF	21, 22, 24-27
Gary Doughty	PEF	21, 21A
Gary Furman	PEF	19-21, 22, 28-31
Gary Miller	PEF	19-21, 21A, 22, 23, 23A, 28-31
William R. Jacobs, Jr., Ph.D.	OPC	21, 21A, 23, 23A, 23B
Peter A. Bradford	PCS	21, 21A, 22, 23, 23A, 23B, 30, 31

<u>Witness</u>	<u>Proffered By</u>	<u>Issues #</u>
Dr. Mark Cooper	SACE	23, 23A, 23B, 30, 31
Arnold Gundersen	SACE	21, 21A, 23, 23A, 23B
Jeffery A. Small	Staff	22 and 28
William Coston and Carl Vinson (adopting Geoff Cryan) Joint Testimony	Staff	21 and 21A

**Rebuttal**

Jon Franke	PEF	24, 26, 27
Gary Furman	PEF	28
Will Garrett	PEF	28
Garry Miller	PEF	21A, 23, 23A, 28
Hugh L. Thompson, Jr.	PEF	21A, 23, 23A, 28
Gary Doughty	PEF	21A
Jeffrey Lyash	PEF	21A, 23

VII. **BASIC POSITIONS**

**FPL:** Section 366.93, Florida Statutes, and Rule 25-6.043, Florida Administrative Code (“the Rule”) sets forth the manner in which prudent and reasonable costs are to be recovered for the siting, design, licensing, and construction of nuclear power plants. This alternative cost recovery mechanism was promulgated to promote electric utility investment in nuclear power generation and allow for the recovery in rates of all such prudently incurred costs. FPL is currently undertaking two nuclear projects which qualify for cost recovery through this Nuclear Cost Recovery Clause (“NCRC”) process – the development of new nuclear units Turkey Point 6 & 7 and the Extended Power Uprate project (“EPU” or “Uprate Project”) at the St. Lucie and Turkey Point plants. As required by the Rule, and as demonstrated in the testimony, exhibits, and Nuclear Filing Requirements (NFRs) filed in this docket, FPL’s expenditures through 2008 on each of these projects were prudently incurred, and FPL’s actual/estimated 2009 expenditures and projected 2010 expenditures are reasonable.

For Turkey Point 6 & 7, 2006 and 2007 site selection costs were necessarily and prudently incurred in order to determine the most appropriate and cost-effective site on which to build two new nuclear units, conduct preliminary engineering reviews, establish the project plan and obtain local zoning approvals for the proposed site. Pre-construction costs for Turkey Point 6 & 7 incurred in 2007 and 2008 were necessarily and prudently incurred for the licensing and permitting of the project, engineering and design, long lead procurement advanced payments and power block engineering and procurement. Throughout the development of Turkey Point 6 & 7, FPL has adhered to a deliberate, step-wise approach focused on maintaining the ability to move forward with the project, creating optionally for major procurement and contracting decisions, and fully recognizing industry and regulatory uncertainty. As a result, FPL has been able to make prudent and cost-effective decisions each step of the way.

With respect to the Uprate Project, in 2008, FPL prudently incurred costs related to the license application, engineering and design, permitting, project management, and power block engineering and procurement. FPL utilized a detailed, engineering-based scoping study to outline the activities, replacements and modifications necessary for the uprates, conducted benchmark studies of other similar utilities that have performed power uprates, and performed initial evaluations of the activities planned to better refine the scope of upgrades needed. Currently, FPL is in the detailed engineering evaluation phase, during which time FPL will define the optimum scope of upgrades needed. This rigorous, engineering-based process also ensures that only costs that are “separate and apart” from those that would have been incurred absent the EPU project have been included in determining the amount of FPL’s NCRC request. Only carrying costs for the EPU project are recovered through the NCRC.

FPL has incurred and expects to incur pre-construction costs for Turkey Point 6 & 7 in 2009 and 2010, and has incurred or expects to incur construction costs for the Uprate Project in 2009 and 2010. FPL’s 2009 actual/estimated costs and 2010 projected costs are reasonable and are supported by overlapping project budget and schedule controls. Additionally, these costs reflect the deliberate step-wise manner in which Turkey Point 6 & 7 is proceeding and the rigorous, engineering-based “separate and apart” analysis that defines FPL’s approach to the EPU project.

The Turkey Point 6 & 7 project and the Uprate Project continue to be cost-effective and in the best interests of FPL’s customers. FPL has provided updated long-term economic analyses of these projects in satisfaction of the requirement stated in Rule 25-6.0423(5)(c)5, Florida Administrative Code. These analyses show that, with a variety of updated inputs, and with total project cost estimates based on the best information currently available, each of these projects are still projected to be cost-effective generation additions for FPL’s customers.

For all the reasons discussed above, and as explained in more detail in the direct testimony and rebuttal testimony filed by its witnesses, FPL's total requested NCRC amount of \$62,789,984 should be approved. For the typical 1,000 kWh residential customer, this total NCRC amount equates to an approximate monthly bill impact of \$0.67. FPL's request consists of (i) site selection costs, pre-construction costs and associated carrying charges for continued development of Turkey Point 6 & 7; and (ii) carrying charges on construction costs, operations and maintenance ("O&M") costs, and base rate revenue requirements for in-service systems for the Uprate Project, all as provided for in Section 366.93 and the Rule. FPL's request complies with the requirements of Section 366.93, Florida Statutes, complies with the Rule, and will enable the proper recovery of costs incurred in the pursuit of additional nuclear generation for the benefit of FPL's customers.

**PEF:**            **CR3 Uprate Project.**

This Commission granted the need determination for the Crystal River 3 ("CR3") Uprate on February 8, 2007. The CR3 Uprate will provide an additional 180 MW of beneficial nuclear generation to PEF's customers and provide fuel savings that offset the cost of the project. Pursuant to Section 366.93, Florida Statutes, and Rule 25-6.0423, F.A.C., PEF filed a petition on March 2, 2009, for cost recovery of its CR3 Uprate project costs. PEF also filed certain Nuclear Filing Requirement ("NFR") schedules, specifically Schedules T-1 through T-10, in support of PEF's actual costs for 2008. In addition, on March 2, PEF filed testimony regarding the CR3 Uprate costs and the Company's project management policies and procedures. PEF then filed, on May 1, 2009, another petition, additional testimony, and NFR schedules AE-1 through AE-10 and P-1 through P-10, for years 2009 and 2010, respectively, in support of PEF's actual/estimated and projected costs.

PEF developed and utilized reasonable and prudent project management policies and procedures to carry out the CR3 Uprate project. These procedures are designed to ensure timely and cost-effective completion of the project. Pursuant to these policies, PEF conducted regular status meetings, both internally and with its vendors. PEF also engaged in regular risk assessment, evaluation, and management. For each of the contracts issued in 2008, PEF issued a Request for Proposal ("RFP") to solicit bids from various vendors. PEF also included reasonable contractual terms in its contracts to ensure proper risk allocation and adequate protection for the Company and its customers. PEF requests that the Commission find that its project management and cost control procedures for 2008 were reasonable and prudent.

PEF also developed and utilized reasonable and prudent accounting and cost oversight controls. These procedures are designed to ensure that the Company appropriately allocates and tracks costs for the CR3 Uprate. Pursuant to these

policies, PEF submitted its actual 2008 costs and developed and submitted its actual/estimated 2009 costs and projected 2010 costs. PEF therefore also requests that the Commission find that its accounting and cost oversight controls for 2008 were reasonable and prudent.

PEF reasonably and prudently incurred construction costs associated with the CR3 Uprate in 2008 in the amount of \$65,137,303. PEF requests that the Commission approve the prudence of these costs. No party has challenged any specific 2008 cost incurred for the CR3 Uprate. The only question raised with respect to the CR3 Uprate project relates to incurring costs before either receiving NRC approval of the Company's License Amendment Request ("LAR") or obtaining reasonable assurance from the NRC that it will approve the LAR. However, the Company has in fact received reasonable assurance from the NRC with respect to its LAR. PEF has been meeting with the NRC to work out engineering issues with respect to the LAR submittal. The Company has also been engaging in the detailed and necessary engineering analysis required to support the LAR submittal. PEF's approach to the CR3 Uprate project is consistent with industry standards and prudent to gain the most benefits for PEF's customers. PEF requests that the Commission find its 2008 CR3 Uprate costs are prudent.

PEF has also reasonably estimated and projected its CR3 Uprate construction costs for 2009 and 2010, in the amount of \$126,126,306 and \$49,872,156, respectively. PEF developed these cost estimates using actual contract figures and project schedule milestones. These costs will be necessary to ensure that the Company can complete the project during the scheduled refueling outages in 2009 and 2011. PEF requests that the Commission find its 2009 actual/estimated and 2010 projected CR3 Uprate costs are prudent.

Pursuant to Rule 25-6.0423(5)(c)5, PEF has also demonstrated the long-term feasibility of completing the CR3 Uprate project. As demonstrated in the updated Integrated Project Plan ("IPP") for the CR3 Uprate, the costs for the project are still bounded by the project's original Business Analysis Package ("BAP"). None of the identified project risks, including regulatory approval risks, are expected to affect the feasibility of completing the project. PEF requests that the Commission approve PEF's feasibility analysis for the CR3 Uprate project.

#### **Levy Nuclear Project.**

This Commission unanimously voted to approve the need determination for the Levy Nuclear Project ("LNP") on July 15, 2008, and it issued its final order on August 12, 2008. The LNP will generate more than 2,000 megawatts of new nuclear generation for the benefit of PEF, its customers, and the State of Florida. Pursuant to Section 366.93, Florida Statutes, and Rule 25-6.0423, F.A.C., PEF filed a petition on March 2, 2009, for cost recovery of its LNP costs. PEF also

filed certain Nuclear Filing Requirement (“NFR”) schedules, specifically Schedules T-1 through T-10, in support of PEF’s actual costs for 2008. In addition, on March 2, PEF filed testimony regarding the LNP costs and the Company’s project management policies and procedures. PEF then filed, on May 1, 2009, another petition, additional testimony, and NFR schedules AE-1 through AE-10 and P-1 through P-10, for years 2009 and 2010, respectively, in support of PEF’s actual/estimated and projected costs.

PEF reasonably and prudently incurred actual costs for the LNP in the amount of \$2,849,210 for 2006, \$84,557,569 for 2007, and \$155,306,978 for 2008. In Docket 080009, the parties stipulated to recovery of the 2006 and 2007 LNP costs as reasonable and deferred the prudence determination of those costs to this proceeding, Docket 090009. The prudence of all costs incurred from 2006 through 2008 have been supported by PEF’s testimony and exhibits filed in this proceeding. Accordingly, PEF requests that its actual 2006 through 2008 costs be approved as prudent and be included in the capacity clause factor.

PEF has also reasonably estimated and projected its LNP costs for 2009 and 2010, in the amount of \$316,501,103 and \$188,549,039, respectively. These 2009 and 2010 costs reflect a primary focus on obtaining key state and federal permits, such as the Site Certification Application (“SCA”) and the Combined Operating License (“COL”). Based on the NRC’s unexpected and unanticipated treatment of certain work prior to the issuance of the LNP COL, PEF now expects a schedule shift in the commercial operation dates of the LNP. Specifically, PEF’s initial schedule anticipated the ability to perform certain site work prior to COL receipt under a Limited Work Authorization (“LWA”) from the NRC. The NRC Staff, however, notified PEF on January 23, 2009, that much of that schedule critical work will have to be deferred until after COL issuance. PEF is currently working with its vendors – Westinghouse and Shaw, Stone, and Webster (the “Consortium”) to assess the impact of the NRC Staff’s position, but it expects a schedule shift of at least 20 months. The Company is already working with the Consortium to amend the Engineering, Procurement, and Construction (“EPC”) contract to address this development.

The Company executed the EPC contract with the Consortium on December 31, 2008. Execution of the EPC contract at the end of 2008 was reasonable and prudent for several reasons. First, execution of the EPC contract in December 2008 preserved benefits that were obtained for PEF and its customers after about two years of hard-fought negotiations with the Consortium. The details of these benefits, which are confidential, are outlined in Mr. Miller’s and Mr. Lyash’s rebuttal testimony. In addition, the EPC contract execution provided an orderly framework for the adjustment to the schedule and the amendment of the EPC contract for such risks as the NRC decision regarding the LWA that occurred. Finally, and contrary to testimony by intervener witnesses, PEF did not know and could not have known in December 2008 that the NRC would refuse to review the

LWA in a timeframe to allow PEF to perform site work before COL issuance. As late as December 4, 2008, the NRC Project Manager for the Levy COL indicated in a public meeting that he expected an LWA review to take 2 years, which is less than the approximately 30 months PEF allowed in its schedule for the NRC review. It was therefore reasonable and prudent for PEF to execute the EPC agreement with the Consortium in December 2008.

PEF developed its 2009 and 2010 cost estimates based on the best information available to the Company. The estimates take into account the schedule shift and reflect the Company's decision to continue the project at a slower pace than originally anticipated. PEF therefore requests that its actual/estimated and projected costs for the LNP be approved as reasonable and included in the Company's capacity clause factor.

In total, in accordance with Section 366.093 and Rule 25-6.0423, PEF is entitled to recover \$446,316,907 through the Capacity Cost Recovery Clause ("CCRC") during the period January through December 2010 for both the LNP and the CR3 Uprate. Although PEF is entitled to recover this full amount, due to current economic conditions, PEF has proposed an alternative that will reduce this total amount to \$236.4 million. This alternative will allow PEF to: (1) amortize the unrecovered balance at year end 2009, which is estimated to be over half the amount or \$298.7 million, over a five year period, and (2) provide for the recovery of 2010 projected costs during 2010 subject to the existing true-up provisions of the rule. The unrecovered balance at year end will be amortized over a five year period (from 2010 to 2014) by removing one-fifth of the balance each year from the CWIP balance. The Company would earn a return on these CWIP balances until they are recovered.

PEF developed and utilized reasonable and prudent project management policies and procedures to carry out the LNP. These procedures are designed to ensure timely and cost-effective completion of the project. Pursuant to these policies, PEF conducted regular status meetings, both internally and with its vendors. PEF also engaged in regular risk assessment, evaluation, and management. When contracting for services, PEF generally issued a Request for Proposal ("RFP") to solicit bids from various vendors. In those circumstances when a sole source vendor was used, PEF followed its contractor selection procedures and justified its sole source contracts with adequate and reasonable rationale. PEF also included reasonable contractual terms in its contracts to ensure proper risk allocation and adequate protection for the Company and its customers. PEF therefore requests that the Commission find that its project management and cost control procedures for 2006-2008 were reasonable and prudent.

Pursuant to Rule 25-6.0423(5)(c)5, PEF has also demonstrated the long-term feasibility of completing the LNP based on facts, circumstances, and information known to date. The AP 1000 technology remains a viable technology. The

Company has met every major project milestone to date, except for the LWA issuance. PEF specifically chose a site, obtained a need determination, applied for a COL and an SCA, and executed the EPC contract. In addition, the fundamental reasons for moving forward with a nuclear project still exist, including fuel diversity and PEF's need for baseload capacity that reduces greenhouse gas emissions. Contrary to what several intervenor witnesses assert, the long-term feasibility of the LNP cannot be based on a cost-effective analysis like what was done to support the need determination proceeding. The Company does not, and should not, evaluate the feasibility of completing the LNP based on annual fluctuations in natural gas prices, emission costs, and load. If the Company believed that annual changes in such forecasts were determinative of the feasibility of completing the nuclear power plants, the Company could never build a nuclear power plant. PEF is moving forward with the LNP because it believes it is feasible, based on the best available information to the Company.

For all these reasons, as more fully developed in PEF's pre-filed testimony and exhibits, including its NFR Schedules, PEF respectfully requests that the Florida Public Service Commission ("FPSC" or "Commission") grant cost recovery for PEF's CR3 Uprate and Levy Nuclear Projects.

**OPC:**

**FPL**

The Citizens' basic position is that based on the filings and information provided to date, FPL has not met its burden to demonstrate that its method of selecting the vendor(s) for the services of engineering, procurement and construction of the Turkey Point 6 & 7 units was prudent and reasonable. Furthermore, FPL has not performed the feasibility analysis required by Commission Rule 25-6.0423, F.A.C. Finally, FPL has not met its burden of demonstrating that the costs for the Extended Power Uprate project are separate and apart from costs that would have been necessary to provide safe and reliable service absent the EPU project.

**PEF**

PEF has not met its burden of demonstrating that its actions related to the signing of the Engineering, Procurement and Construction (EPC) contract on December 31, 2008 were reasonable and prudent in light of circumstances known or knowable to management at the time of signing. Also, PEF has not submitted a sufficient or compliant long-term feasibility analysis related to completing of the Levy Nuclear Project (LNP) as required by Commission Rule 25-6.043, F.A.C., and the LNP Determination of Need Order. The Commission should consider spinning off the issues surrounding the LNP project schedule delay and also require PEF to file additional information related to the circumstances surrounding the signing of the EPC and the feasibility of the LNP project based on revised costs. Additionally, the Commission should place PEF on notice that costs expended prior to issuance of any license amendment request (LAR) approval could be subject to further prudence review if the related LAR(s) are denied.

**PCS**

**PHOSPHATE:** PEF has not submitted the detailed on-going feasibility analysis for completion of the Levy Nuclear Project (“LNP”) that is required by Commission Rule 25-6.0423 and the Commission’s Determination of Need Order for LNP. Also, material changes in circumstance have occurred, including the project delays PEF announced in its May 1, 2009 filing, that require a thorough re-assessment of the commercial feasibility of the LNP units. The Commission should direct PEF to prepare and file complete and updated LNP project cost, schedule and feasibility assessments for review in a separate proceeding. Capacity clause recovery of estimated LNP costs that are recoverable under the nuclear cost recovery rule should be suspended pending Commission approval of LNP feasibility in that separate proceeding. PCS Phosphate accepts and supports the Office of Public Counsel findings and recommendations related to LNP prudence issues.

**FIPUG:** FIPUG supports the development of cost effective, reasonable and prudent energy sources to serve Florida consumers. However, the development of such energy resources, particularly nuclear power plants, must be done accomplished in a reasonable and prudent fashion. Efforts to develop nuclear power plants must reasonable and prudently take into account changed circumstances, including decreased forecasts for future energy demand, decreased forecast of natural gas prices, increased capacity resulting from renewable energy and energy efficiency measures and changes in regulatory policy. The Commission should require additional information, data and analysis be filed to support the long feasibility of the proposed nuclear projects.

**SACE:** Rule 25-6.0423, F.A.C. explicitly and unequivocally requires FPL and PEF to submit for Commission review and approval a detailed analysis demonstrating the long-term feasibility of completing the project at issue, in this case, the Turkey Point 6 & 7 project and the Levy Units 1 & 2 project (“projects”).<sup>1</sup> As evidenced by the prefiled testimony of witnesses for FPL and PEF, as well as discovery conducted in this matter, both FPL and PEF have failed to meet their burden to demonstrate the long-term feasibility of these projects.

FPL, because it is unsure of the updated estimated cost of the Turkey Point 6 & 7 project, attempts to demonstrate long-term feasibility through the creation of a new methodology, which, amongst other problems, impermissibly limits the scope of review to a question of whether or not to build nuclear reactors, and in so doing excludes other reasonable alternatives which may be less costly. PEF, in contrast, has failed to even *attempt* to demonstrate long-term feasibility, and instead relies on statements of its witnesses that they are considering issues relevant to long-term feasibility. Ultimately, both FPL and PEF have failed to

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<sup>1</sup> The Rule further requires that a utility file a “detailed statement of project cost” which is sufficient to support a Commission finding of prudence. Rule 25-6.0423(8). Neither utility has done so in this matter.

take into account dramatically changed circumstances as well as other uncertainties which have made completion of these projects infeasible.

It is the responsibility of the Commission to fix "fair, just and reasonable" rates for Florida ratepayers. Fla. Stat. § 366.06. In this docket, because FPL and PEF have failed to demonstrate the long-term feasibility of completing these projects, the utilities have as a result failed to demonstrate that the costs for which they seek recovery for 2009 and 2010 are prudent. As a result, the Commission should deny both FPL and PEF's requested cost recovery for 2009 and 2010, as it would be imprudent for the Commission to allow the utilities to incur further expenses or recover those expenses from Florida ratepayers.

**FEA:** No position.

**STAFF:** Staff's positions are preliminary and based on materials filed by the parties and on discovery. The preliminary positions are offered to assist the parties in preparing for the hearing. Staff's final positions will be based upon all the evidence in the record and may differ from the preliminary positions.

## VIII. ISSUES AND POSITIONS

### *Policy and Legal Issues (1-3)*

**ISSUE 1:** **PROPOSED STIPULATION – CATEGORY II, among FPL, PEF and Staff (See Section X)**

**ISSUE 2:** **When a utility elects to defer recovery of some or all of the costs that the Commission approves for recovery through the Capacity Cost Recovery Clause, what carrying charge should accrue on the deferred balance?**

**FPL:** If a utility requests deferral of approved costs, and the Commission approves such deferral, then the Commission has effectively created a regulatory asset for future recovery through the CCRC. The regulatory asset should remain in the NCRC and continue to accrue carrying charges at the pre-tax AFUDC rate as of June 2007. Deferred amounts (i.e., regulatory assets in the NCRC) do not contribute to over or under recoveries that are subject to interest at the commercial paper rate applied to the CCRC. (Powers)

**PEF:** Pursuant to Section 366.93(1)(f) and Rule 25-6.0423(5)(a), the utility is entitled to and therefore should recover a carrying equal to the utility's allowance for funds used during construction rate until costs are recovered in rates. If a utility has been granted permission by the Commission to defer collection of costs that were previously approved for recovery and thereby removes these costs from rates,

they are not recovered and per the statute and rule should accrue the above carrying charge. By not recovering these deferred costs in the year in which they are entitled to recovery, those costs are not included in rates and therefore the utility is entitled to earn a return on them. (Foster)

**OPC:** The Office of Public Counsel has not had adequate opportunity to formulate a legal opinion on this issue and will brief it.

**PCS**

**PHOSPHATE:** PCS Phosphate has not had adequate opportunity to formulate a legal opinion on this issue and will brief it.

**FIPUG:** FIPUG has not had adequate opportunity to formulate a legal opinion on this issue and will brief it.

**SACE:** SACE has not had adequate opportunity to formulate a legal opinion on this issue and will brief it.

**FEA:** No position.

**STAFF:** No position at this time.

**ISSUE 3:** **Should FPL and PEF be permitted to record in rate base the incremental difference between Allowance for Funds Used During Construction (AFUDC) permitted by Section 366.93, F.S. and their respective most currently approved AFUDC, for recovery when the nuclear plant enter commercial operation?**

**FPL:** Yes. As defined by the Nuclear Cost Recovery Rule 25-6.0423(2)(d), "costs" includes, but is not limited to, all capital investments including rate of return. Utilities should be allowed to recover the approved carrying costs under the Rule, while tracking the incremental/decremental difference between the carrying charge rate required by Section 366.93, F.S. and the most currently Commission-approved AFUDC rate. The incremental/decremental difference will be accumulated and recorded to CWIP and recovered/returned through base rates over the useful life of the related plant assets placed in service. This method allows for recovery of the Company's Commission-approved carrying cost through the NCRC, while ensuring the customers only pay for the actual financing costs, no more or less. (Powers)

**PEF:** No, FPL and PEF should not be permitted to record in rate base the incremental difference between AFUDC permitted by Section 366.93 and their respective most currently approved AFUDC for recovery when the nuclear plant enters commercial operation. The nuclear cost recovery statute clearly sets forth the

carrying charge to be applied to the recovery of nuclear costs. Section 366.93 fixes the carrying charge at the last approved AFUDC rate at the time the need was approved to promote nuclear investment. Any attempt to capture incremental differences between the carrying charge authorized by Section 366.93 and the most currently approved AFUDC rate through NCRC or Base Rates would violate the legislation. (Foster)

**OPC:** The Office of Public Counsel has not had adequate opportunity to formulate a legal opinion on this issue and will brief it.

**PCS**

**PHOSPHATE:** PCS Phosphate has not had adequate opportunity to formulate a legal opinion on this issue and will brief it.

**FIPUG:** FIPUG has not had adequate opportunity to formulate a legal opinion on this issue and will brief it.

**SACE:** SACE has not had adequate opportunity to formulate a legal opinion on this issue and will brief it.

**FEA:** No position.

**STAFF:** No position at this time.

*Florida Power & Light Company's Specific Issues (4-18)*

**ISSUE 4:** PROPOSED STIPULATION – CATEGORY II, between FPL and Staff  
(See Section X)

**ISSUE 5:** PROPOSED STIPULATION – CATEGORY II, between FPL and Staff  
(See Section X)

**ISSUE 6:** PROPOSED STIPULATION – CATEGORY II, between FPL and Staff  
(See Section X)

**ISSUE 7:** Should the Commission find that for the year 2008, FPL's project management, contracting, and oversight controls were reasonable and prudent for the Turkey Point Units 6 & 7 project and the Extended Power Uprate project?

**FPL:** Yes. FPL's practices include a series of documented, overlapping processes that ensure the Company's system of internal controls is being implemented within the projects and ensure the appropriate levels of senior management level oversight. The project management, cost estimation, and risk management attributes of FPL are highly developed, well documented, and adhered to by the project teams. FPL's management decisions with respect to both the Turkey Point 6 & 7 project and the Uprates project are the product of properly qualified, well-informed FPL management following appropriate procedures and internal controls. (Scroggs, Kundalkar, Reed)

**OPC:** For Turkey Point Units 6 & 7, see Issue 7A. With respect to the EPU project, no position at this time. (Jacobs)

**FIPUG:** Concurs with OPC's position.

**SACE:** No position.

**FEA:** No position.

**STAFF:** No position at this time.

**ISSUE 7A:** Is FPL's decision in 2008 to pursue an alternative to an Engineering Procurement Construction (EPC) contract for the Turkey Point 6 & 7 project prudent and reasonable?

**FPL:** Yes. During 2008 FPL carefully considered, decided upon and implemented an alternative strategy which, preserves the option of pursuing either an EPC contract or separate EP & C contracts for the Turkey Point 6 & 7 project. FPL's approach creates greater flexibility and optionally for itself and its customers, as well as the potential for significant cost savings for FPL's customers. (Scroggs, Reed)

**OPC:** No. Separating the construction function from engineering and procurement (EP and C, as compared to EPC) in a project as large and complex as the Turkey Point 6 & 7 project would expose FPL and its customers to the risk of unreasonably high costs. In a project of this magnitude, the contractors must interface with each other numerous times. In an EPC contract, the risk of managing those interfaces is placed on the overall contractor. When the construction function is separated, the utility carries the risk of managing the interfaces—including the risk of delays and overruns in the event those interfaces do not occur efficiently and timely. OPC raises this issue now so that, in the event FPL organizes the contracts on a basis other than EPC, and the decision results in unreasonable costs, FPL will not be able to claim a disallowance is based on hindsight review. (Jacobs)

**FIPUG:** No. The traditional approach of pursuing an Engineering, Procurement and Construction contract, at the appropriate time, is the better course of action.

**SACE:** No position.

**FEA:** No position.

**STAFF:** No position at this time.

**ISSUE 8:** **Should the Commission approve what FPL has submitted as its annual detailed analyses of the long-term feasibility of completing the Turkey Point 6 & 7 project, as provided for in Rule 25-6.0423, F.A.C.?**

**FPL:** Yes. FPL used 3 different fuel cost forecasts and 4 environmental compliance cost forecasts for several types of emissions (SO<sub>2</sub>, NO<sub>x</sub>, and CO<sub>2</sub>) in its analyses. This allows a number of combinations of fuel and environmental compliance costs to serve as possible future scenarios with which to view the economics of Turkey Point 6 & 7. Additionally, FPL annually updates these projections of fuel costs and environmental compliance costs, and updates a number of other assumptions such as the load forecast, for its economic analyses. FPL's non-binding cost estimate used in this analysis is based on the best information currently available to represent the range of expected costs. Based on this analysis, Turkey Point 6 & 7 is still projected to be a solidly cost-effective addition for FPL's customers. The results of the analysis fully support the feasibility of continuing the Turkey Point 6 & 7 project. (Scroggs, Reed, Sim)

**OPC:** No. FPL updated its assumptions in other respects, but did not update its estimate of the cost of Turkey Point 6&7. Without the updated construction costs, FPL's "updated feasibility study" is worthless. (Jacobs)

**FIPUG:** No. Detailed and updated construction costs should also be provided.

**SACE:** No. The "breakeven" analysis proffered by FPL in an attempt to demonstrate long-term feasibility was created because FPL is unsure of the updated estimated cost of the Turkey Point 6 & 7 reactors. Rule 25-6.0423(8) F.A.C., explicitly requires that FPL submit a detailed statement of project cost. This omission makes FPL's "breakeven" analysis of little import to the Commission in determining the long-term feasibility of the Turkey Point 6 & 7 units.

Furthermore, FPL's "breakeven" analysis improperly narrows the scope of review of any prudent feasibility analysis, as it simply asks the question of whether or not to build nuclear reactors. It does not ask whether other alternatives would be less costly.

Finally, the “breakeven” framework created by FPL is flawed because it makes crucial assumptions about escalation and excess capacity which are incorrect, thus distorting the true picture of long-term feasibility to the Commission. (Cooper, Gunderson)

**FEA:** No position.

**STAFF:** No position at this time.

**ISSUE 8A:** **If the Commission does not approve FPL’s long term feasibility analyses of Turkey Point 6 & 7, what further action, if any, should the Commission take?**

**FPL:** No Commission action is necessary. As noted in Issue 8, the Commission should approve FPL’s annual detailed analysis of the long-term feasibility of completing the Turkey Point 6 & 7 project, which complies with Rule 25-6.0423, F.A.C. (Scroggs, Sim)

**OPC:** The Commission should order FPL to conduct the proper updated feasibility study by a time certain. Once the Commission receives it, the Commission should evaluate whether the project remains feasible on a long term basis. (Jacobs)

**FIPUG:** The Commission should require FPL to prepare and file, in a timely fashion, an updated feasibility study.

**SACE:** The Commission should deny cost recovery for FPL’s 2009 and 2010 costs. (Cooper, Gunderson)

**FEA:** No position.

**STAFF:** No position at this time.

**ISSUE 9:** **PROPOSED STIPULATION – CATEGORY II, between FPL and Staff (See Section X)**

**ISSUE 10:** **PROPOSED STIPULATION – CATEGORY II, between FPL and Staff (See Section X)**

**ISSUE 11:** **Are FPL’s 2008 actual, 2009 actual/estimated and 2010 projected EPU project costs separate and apart from the nuclear costs that would have been**

**necessary to provide safe and reliable service had there been no EPU project?**

**FPL:** Yes. FPL employs a rigorous, in-depth engineering-based process to ensure that only costs that are “separate and apart” from those that would have been incurred absent the EPU project have been included in determining the amount of FPL’s NCRC request. This process includes project scope determination through detailed engineering analyses; reviews of historical nuclear division plans for plant expenditures and Nuclear Regulatory Commission license renewal commitments; oversight by a cross-functional uprate costs review team; the careful process of recording costs and compiling the Nuclear Filing Requirements, and the many processes and procedures attendant thereto. The 20-year study recommended by Dr. Jacobs would be speculative, would most likely increase costs to customers, and should be rejected. (Kundalkar, Powers)

**OPC:** FPL has not met its burden of proving that these costs are separate and apart from the nuclear costs that would have been necessary to provide safe and reliable service had there been no EPU project. Despite participating in a stipulation on the subject, FPL adamantly has refused to conduct the “separate and apart” analysis that constitutes an essential component in the determination of those EPU costs that qualify for inclusion in the nuclear cost recovery clause. (Jacobs)

**FIPUG:** Insufficient evidence exists to meet FPL’s burden of proof that such costs are separate and apart from nuclear costs that would have been necessary to provide safe and reliable service had there been on EPU project.

**SACE:** No position.

**FEA:** No position.

**STAFF:** No position at this time.

**ISSUE 12:** **What system and jurisdictional amounts should the Commission approve as FPL’s reasonable actual/estimated 2009 costs for the Extended Power Uprate project?**

**FPL:** FPL’s actual/estimated EPU expenditures for which it is requesting a reasonableness determination for the period January 2009 through December 2009 on a total system basis are \$258,926,772. Schedule A/E-6 in Appendix I deducts the portion for which the St. Lucie Unit 2 participants are responsible and then applies the retail jurisdictional factor to the remainder. After these adjustments, the net 2009 jurisdictional EPU expenditures equal \$252,317,529, along with related carrying charges of \$20,297,390. FPL is also requesting a reasonableness determination for \$568,000 (\$544,467 jurisdictional, net of

participants) of recoverable O&M expenses shown on Schedule A/E-4 and a reasonableness determination for the base rate revenue requirements of \$83,651 related to the Gantry Crane going into plant in service at St. Lucie Unit 2 in October 2009. FPL's 2009 actual/estimated construction expenditures are supported by comprehensive procedures, processes and controls which help ensure that these costs are reasonable. (Kundalkar, Powers)

**OPC:** No position.

**FIPUG:** No position.

**SACE:** No position.

**FEA:** No position.

**STAFF:** No position at this time.

**ISSUE 13:** **What system and jurisdictional amounts should the Commission approve as FPL's reasonably projected 2010 costs for the Extended Power Uprate project?**

**FPL:** The Commission should approve the amount of \$391,614,248 (376,703,895 jurisdictional, net of participants) as FPL's reasonable 2010 projected construction costs, along with related carrying charges of \$41,594,586, and the amount of \$2,209,376 (\$2,147,983 jurisdictional, net of participants) as FPL's reasonably projected O&M costs for the EPU project. In addition, FPL is requesting a reasonableness determination for the projected base rate revenue requirements of \$15,991,104 related to St. Lucie Unit 1, Turkey Point Unit 3 and transmission plant going into service in 2010, for recovery through the Capacity Cost Recovery Clause in 2010. FPL's 2010 projected construction expenditures are supported by comprehensive procedures, processes and controls which help ensure that these projected costs are reasonable. (Kundalkar, Powers)

**OPC:** No position.

**FIPUG:** No position.

**FEA:** No position.

**SACE:** No position.

**STAFF:** No position at this time.

**ISSUE 14:** **PROPOSED STIPULATION – CATEGORY II, between FPL and Staff**  
**(See Section X)**

**ISSUE 15:** **PROPOSED STIPULATION – CATEGORY II, between FPL and Staff**  
**(See Section X)**

**ISSUE 16:** **What system and jurisdictional amounts should the Commission approve as reasonably estimated 2009 costs for FPL’s Turkey Point Units 6 & 7 project?**

**FPL:** The Commission should approve \$45,640,661 (\$45,444,468 jurisdictional) as FPL’s reasonable 2009 actual/estimated preconstruction costs, \$3,560,771 in related carrying charges and \$472,938 as carrying charges on prior years’ unrecovered site selection costs. FPL’s 2009 actual/estimated expenditures are supported by comprehensive procedures, processes and controls which help ensure that these costs are reasonable. (Scroggs, Powers)

**OPC:** No position.

**FIPUG:** No position.

**SACE:** None. FPL has not demonstrated long-term feasibility as required by Rule 25-6.0423(5)(c)5, F.A.C., therefore no such cost could be reasonably and prudently estimated and/or incurred. (Cooper)

**FEA:** No position.

**STAFF:** No position at this time.

**ISSUE 17:** **What system and jurisdictional amounts should the Commission approve as reasonably projected 2010 costs for FPL’s Turkey Point Units 6 & 7 project?**

**FPL:** The Commission should approve \$91,730,615 (\$90,654,124 jurisdictional) as FPL’s reasonable 2010 projected preconstruction costs, \$973,735 in related carrying charges and \$233,136 as carrying charges on prior years’ unrecovered site selection costs. FPL’s 2010 projected expenditures are supported by comprehensive procedures, processes and controls which help ensure that these projected costs are reasonable. (Scroggs, Powers)

**OPC:** No position.

**FIPUG:** No position.

**SACE:** None. FPL has not demonstrated long-term feasibility as required by Rule 25-6.0423(5)(c)5, F.A.C., therefore no such cost could be reasonably and prudently projected and/or incurred. (Cooper)

**FEA:** No position.

**STAFF:** No position at this time.

**ISSUE 18:** **What is the total jurisdictional amount to be included in establishing FPL's 2010 Capacity Cost Recovery Clause factor?**

**FPL:** The total jurisdictional amount of \$62,789,984 should be included in establishing FPL's 2010 Capacity Cost Recovery Clause factor. This amount consists of site selection costs, pre-construction costs and associated carrying charges for continued development of Turkey Point 6 & 7; and carrying charges on construction costs, operations and maintenance O&M costs, and base rate revenue requirements for in-service systems for the Uprate Project, all as provided for in Section 366.93 and the Rule. (Powers)

**OPC:** No position.

**FIPUG:** No position.

**SACE:** No position.

**FEA:** No position.

**STAFF:** No position at this time.

***Progress Energy Florida, Inc.'s Specific Issues (19-32B)***

**ISSUE 19:** **PROPOSED STIPULATION – CATEGORY II, between PEF and Staff (See Section X)**

**ISSUE 20:** **PROPOSED STIPULATION – CATEGORY II, between PEF and Staff (See Section X)**

**ISSUE 21:** **Should the Commission find that for the year 2008, PEF's project management, contracting, and oversight controls were reasonable and prudent for the Levy Units 1 & 2 project and the Crystal River Unit 3 Uprate project?**

**PEF:** Yes, for the year 2008, PEF's project management, contracting, and oversight controls were reasonable and prudent for the CR3 Uprate project and the LNP. These procedures are designed to ensure timely and cost-effective completion of the project. They include regular status meetings, both internally and with its vendors. These project management and oversight controls also include regular risk assessment, evaluation, and management. There are also adequate, reasonable policies regarding contracting procedures, including how to conduct RFPs to solicit bids from various vendors, and when sole source contracts are justified. (Franke, Miller, Furman, Doughty)

**OPC:** No. At this time, due to the status of the LAR(s) (License Amendment Request) relative to the expenditures to date for the final phases of the CR3 EPU, the Commission cannot conclude that management, contracting and oversight controls were reasonable and prudent with respect to the EPU. The Commission should take note of the status of the NRC's review and approval process and place PEF on notice that costs expended for projects yet to be licensed – although recoverable at this time – maybe subject to prudence review if licensing is not achieved. This would not be hindsight review, but recognition that PEF has assumed the risk of proceeding with the lion's share of the expenditures before achieving a reasonable certainty that licensing will be achieved for the full extent of the uprate in thermal power.

**PCS**

**PHOSPHATE:** PCS Phosphate agrees with and adopts the position of the OPC.

**FIPUG:** Concurs with OPC.

**SACE:** No. In regard to the Levy Units 1 & 2 project, PEF unreasonably and imprudently relied upon the assumption that the NRC would grant PEF a LWA as requested in its COLA, and made fundamental contracting, scheduling, and cost assumptions based on this assumption. Now that the LWA request has been withdrawn due to NRC concerns with the request, the schedule for the Levy Units 1 & 2 project has been significantly delayed which will result in increased costs. (Gunderson)

**FEA:** No position.

**STAFF:** No position at this time.

**ISSUE 21A:** Was it reasonable and prudent for PEF to execute its EPC contract at the end of 2008? If the Commission finds that this action was not reasonable and prudent, what actions, if any, should the Commission take?

**PEF:** PEF acted reasonably and prudently in executing the EPC contract at the end of 2008. First, execution of the EPC contract in December 2008 preserved benefits that were obtained for PEF and its customers after about two years of hard-fought negotiations with the Consortium. The details of these benefits, which are confidential, are outlined in Mr. Miller's and Mr. Lyash's rebuttal testimony. In addition, the EPC contract execution provided an orderly framework for the adjustment to the schedule and the amendment of the EPC contract for such risks as the NRC decision regarding the LWA that occurred. Finally, and contrary to testimony by intervener witnesses, PEF did not know and could not have known in December 2008 that the NRC would refuse to review the LWA in a timeframe to allow PEF to perform site work before COL issuance. As late as December 4, 2008, the NRC Project Manager for the Levy COL indicated in a public meeting that he expected an LWA review to take 2 years, which is less than the approximately 30 months PEF allowed in its schedule for the NRC review. (Lyash, Miller, Thompson, Doughty)

**OPC:** No. based on the circumstances the PEF knew or should have reasonably known, it was not reasonable or prudent for PEF to sign the EPC contract with the Consortium.

**PCS**

**PHOSPHATE:** PCS Phosphate agrees with and adopts the position of the OPC. Moreover, the Commission should conduct a detailed examination of the EPC contract's execution in view of the known and reasonably expected ramifications of an unfavorable NRC reaction to the Limited Work Authorization request. (Bradford)

**FIPUG:** No.

**SACE:** No. PEF unreasonably and imprudently relied upon the assumption that the NRC would grant PEF a LWA as requested in its COLA, and made fundamental contracting, scheduling, and cost assumptions based on this assumption. Now that the LWA request has been withdrawn due to NRC concerns about the request, the schedule for the Levy Units 1 & 2 project has been significantly delayed which will result in increased costs. SACE believes that the Commission should deny cost recovery for PEF's 2009 and 2010 costs. (Gunderson)

**FEA:** No position.

**STAFF:** No position at this time.

**ISSUE 22:** **PROPOSED STIPULATION – CATEGORY II, between PEF and Staff (See Section X)**

**ISSUE 23:** Should the Commission approve what PEF has submitted as its annual detailed analysis of the long-term feasibility of continuing construction and completing the Levy Units 1 & 2 project, as provided for in Rule 25-6.0423, F.A.C., and Order No. PSC-08-0518-FOF-EI (Determination of Need Order)?

**PEF:** Yes, the Commission should approve what PEF has submitted as its annual detailed analysis of the long-term feasibility of completing the LNP. With the testimony of Garry Miller, PEF submitted a detailed analysis setting forth the long term feasibility of completing the LNP, consistent with the requirements of Rule 25-6.0423 and the Determination of Need Order. The rule and the need order do not contain any detailed specifications as to what the Company's analysis should include, so PEF included the information its management uses to determine whether the LNP can be completed. The LNP is feasible based on facts, circumstances, and information known to date. The AP 1000 technology remains a viable technology. The Company has met every major project milestone to date, except for the LWA issuance. PEF specifically chose a site, obtained a need determination, applied for a COL and an SCA, and executed the EPC contract. In addition, the fundamental reasons for moving forward with a nuclear project still exist, including fuel diversity and PEF's need for baseload capacity that reduces greenhouse gas emissions. Despite what several intervenor witnesses assert, the long-term feasibility of the LNP cannot be based on a cost-effective analysis like what was done to support the need determination proceeding. The Company does not, and should not, evaluate whether the LNP can be completed based on annual fluctuations in natural gas prices, emission costs, and load. If the Company believed that annual changes in such forecasts were determinative of the feasibility of completing the nuclear power plants, the Company could never build a nuclear power plant. PEF is moving forward with the LNP because it believes it is feasible, based on the best available information to the Company. (Lyash, Miller)

**OPC:** No. PEF has not submitted a feasibility analysis that considers the overall cost of the projects. Because of the need to renegotiate the EPC, it is not possible at this time for PEF to provide the costs necessary to conduct this analysis. Additionally, PEF's filing does not appear to sufficiently address the non-cost components of technical and regulatory feasibility -- cost deficiencies notwithstanding. Once the Commission receives it, the Commission should evaluate whether the project remains feasible on a long term basis. (Jacobs)

**PCS**

**PHOSPHATE:** No. Progress has not submitted the detailed feasibility analysis that is required. It appears that PEF cannot provide updated project cost and schedule assessments until it has completed its own re-assessment of the project and negotiated possible revisions to the EPC contract executed in December 2008. Consequently, PEF is not likely to produce the required feasibility analysis in this docket. The

Commission should find that the materials filed by PEF do not satisfy the above-noted requirements. (Bradford)

**FIPUG:** Concurs with OPC.

**SACE:** No. PEF has simply not submitted *any* analysis regarding the long-term feasibility of continuing construction and completing the Levy Units 1 & 2 project as required by Rule 25-6.0423 or Order No. PSC-08-0518-FOF-EI.

The testimony filed by PEF to date presents little tangible evidence that it is conducting any ongoing analysis in regards to feasibility. Rather, PEF seeks to rely on statements of its witnesses that PEF is considering the feasibility issue and its components, which certainly does not meet its burden under the Rule or the Order. (Cooper, Gunderson)

**FEA:** No position.

**STAFF:** No position at this time.

**ISSUE 23A:** **If the Commission does not approve PEF's long term feasibility analysis of Levy Units 1 & 2, what further action, if any, should the Commission take?**

**PEF:** The Commission should specifically identify the nature of its perceived deficiencies in PEF's analysis and permit PEF to re-file with the additional requested information. The Commission should not disallow any of PEF's requested cost recovery amounts, because PEF was not on prior notice as to how the Commission would interpret Rule 25-6.0423 and the Determination of Need Order. Therefore, due process requires that PEF be afforded an opportunity to submit additional information. (Miller, Lyash)

**OPC:** The Commission should order PEF to file a feasibility analysis pursuant to the rule and need order as soon as the costs associated with the revised schedule are known and measurable. The Commission should consider identifying and withholding approval of costs that would not have been incurred but for the signing of the EPC contract (or a reasonable estimate or surrogate for those costs) until and unless PEF files an adequate long term feasibility analysis. (Jacobs)

**PCS**

**PHOSPHATE:** The Commission should require PEF to prepare and file a complete and detailed update of LNP cost, schedule and on-going feasibility as soon as practicable once PEF has settled on a revised project path and concluded any re-negotiation required to complete the analyses required. In the interim, the Commission should suspend Levy Project nuclear cost recoveries in 2010, other than actual costs through 2008 that have been deemed prudent, until PEF completes its

assessment of project schedule options, negotiates whatever changes the utility deems necessary to its EPC agreement with Westinghouse/ SSW, files a detailed updated feasibility assessment, demonstrates the continuing cost-effectiveness of each Levy unit compared to alternative supply and demand resources (subject to further hearings), and receives findings of on-going feasibility and reasonableness from the Commission. (Bradford)

**FIPUG:** The Commission should require PEF to prepare and file, in a timely fashion, an updated feasibility study which includes detailed cost information flowing from PEF's revised project schedule.

**SACE:** The Commission should deny cost recovery for PEF's 2009 and 2010 costs. (Cooper, Gunderson)

**FEA:** No position.

**STAFF:** No position at this time.

**ISSUE 23B:** **What further steps, if any, should the Commission require PEF to take regarding the Levy Units 1 & 2?**

**PEF:** The Commission has all the information it needs to make a prudence determination on the Company's costs and actions for 2006-2008, and it has all the information it needs to determine that its costs are reasonable for 2009 and 2010. The purpose of this proceeding, as set forth in Rule 25-6.0423, is to make prudence determinations as to costs actually incurred in 2008. There is therefore nothing else the Commission should require PEF to do with respect to Levy Units 1 & 2.

**OPC:** See Issue 23A position. In addition, the commission should consider spinning off into a separate docket the issues of feasibility and prudence and cost impacts associated with the LNP project relative to the schedule delay issue. The Commission should require PEF to file additional information relating to the circumstances related to the signing of the EPC and the costs of a renegotiated EPC contract. (Jacobs)

**PCS**

**PHOSPHATE:** See Issue 23A. Also, the Commission should consider establishing a separate proceeding to assess both prudence and on-going feasibility issues related to the LNP project delay. The Commission should also consider alternative regulatory oversight methods and mechanisms to protect PEF consumers from escalating project costs. (Bradford)

**FIPUG:** Concurs with OPC.

**SACE:** At a minimum, PEF should have to demonstrate that Levy Units 1 & 2 are the least-cost alternative of supplying power when the project is reasonably expected to come online. (Cooper, Gunderson)

**FEA:** No position.

**STAFF:** No position at this time.

**ISSUE 24:** **PROPOSED STIPULATION – CATEGORY II, between PEF and Staff  
(See Section X)**

**ISSUE 25:** **PROPOSED STIPULATION – CATEGORY II, between PEF and Staff  
(See Section X)**

**ISSUE 26:** **What system and jurisdictional amounts should the Commission approve as PEF's reasonably estimated 2009 costs for the Crystal River Unit 3 Uprate project?**

**PEF:** The 2009 reasonably estimated system Crystal River Unit 3 Uprate project costs are \$126,126,306 (\$91,712,976 jurisdictional) in expenses and \$8,108,218 (\$7,596,559 jurisdictional) in O&M expenses. The resultant jurisdictional carrying costs are \$13,246,483 and other adjustments related to Phase II (BOP) of \$1,242,555.

For purposes of the CCRC, the final 2009 NCRC true up amount is an under estimate of \$7,292,431 in O&M expenses, an under estimate of 1,242,255 in other adjustments plus an over estimate of \$1,674,082 in carrying costs. The net under estimate amount of \$6,860,904 should be included in setting the allowed 2010 NCRC recovery. This updated position reflects the impact of the stipulation on issue 1 associated with recognizing over/under recoveries associated with sales variances in the Capacity Clause. Other impacts from implementing the policy decisions in issues 1-3 will be captured as part of the normal true up process. (Foster, Franke)

**OPC:** No position.

**PCS**  
**PHOSPHATE:** No position.

**FIPUG:** No position.

**SACE:** No position.

**FEA:** No position.

**STAFF:** No position at this time.

**ISSUE 27:** **PROPOSED STIPULATION – CATEGORY II, between PEF and Staff  
(See Section X)**

**ISSUE 28:** **PROPOSED STIPULATION – CATEGORY II, between PEF and Staff  
(See Section X)**

**ISSUE 29:** **PROPOSED STIPULATION – CATEGORY II, between PEF and Staff  
(See Section X)**

**ISSUE 30:** **What system and jurisdictional amounts should the Commission approve as  
reasonably estimated 2009 costs for PEF's Levy Units 1 & 2 project?**

**PEF:** The 2009 reasonably estimated system Levy Units 1 & 2 project costs are \$316,501,103 (\$279,598,436 jurisdictional) in expenses and \$5,513,853 (\$4,931,288 jurisdictional) in O&M expenses. The resultant jurisdictional carrying costs are \$22,278,969.

For purposes of the CCRC, the final 2009 NCRC true up amount is an under estimate of \$165,278,803 in expenses plus an under estimate of \$3,688,174 in O&M expenses plus an over estimate of \$27,301,323 in carrying costs. The net under estimate amount of \$141,665,654 should be included in setting the allowed 2010 NCRC recovery. This updated position reflects the impact of the stipulation on issue 1 associated with recognizing over/under recoveries associated with sales variances in the Capacity Clause. Other impacts from implementing the policy decisions in issues 1-3 will be captured as part of the normal true up process. (Foster, Furman, Miller)

**OPC:** No position.

**PCS**  
**PHOSPHATE:** No position.

**FIPUG:** No position.

**SACE:** None. PEF has not demonstrated long-term feasibility as required by Rule 25-6.0423(5)(c)5, F.A.C. Therefore, no such costs could be reasonably estimated and moreover could not be prudently incurred. (Cooper)

**FEA:** No position.

**STAFF:** No position at this time.

**ISSUE 31:** **What system and jurisdictional amounts should the Commission approve as reasonably projected 2010 costs for PEF's Levy Units 1 & 2 project?**

**PEF:** A reasonable projection of 2010 system Levy Units 1 & 2 costs are \$188,549,039 (\$149,520,191 jurisdictional) in expenses and \$5,201,011 (\$4,433,053 jurisdictional) in O&M expenses. The resultant jurisdictional carrying costs are \$26,094,107 under traditional NCRC recovery and \$55,291,066 under PEF's alternative proposal. The net amount of \$136,649,767 under traditional NCRC recovery or \$165,846,725 under PEF's alternative proposal should be included in setting the allowed 2010 NCRC recovery. (Foster, Furman, Miller)

**OPC:** No position.

**PCS**

**PHOSPHATE:** No position.

**FIPUG:** No position.

**SACE:** None. PEF has not demonstrated long-term feasibility as required by Rule 25-6.0423(5)(c)5, F.A.C. Therefore no such cost could be reasonably projected and moreover could not be prudently incurred. (Cooper)

**FEA:** No position.

**STAFF:** No position at this time.

**ISSUE 32:** **Should the Commission approve PEF's alternative cost recovery proposal, as set forth in PEF's Petition and supporting Testimony, as to recovery of NCRC costs?**

**PEF:** Yes, with the below clarifications to reflect the impact of maintaining the over/under recovery due to sales variance in the Capacity Clause per the stipulation in issue 1 and to preserve flexibility in future rate making. The Commission should approve a PEF rate management plan and acknowledge that PEF will have the right to collect the proposed deferral over the next 5 years. However, the Commission should not require PEF to have a set annual

amortization schedule because such future requirements may limit or unnecessarily encumber PEF's future rate management efforts. The Commission should approve deferral of \$273,889,606 of the 2009 ending preconstruction and site selection under recovery balance. This, as well as any other impacts of implementing the policy decisions surrounding Issue 1 and 2 as well as the decisions around issues 19-31 will be reflected in PEF's 2009 true-up filing. The Commission should approve recognition in 2010 of amortization of \$34.9 million of the approved deferral, which is the \$59.7 million in PEF's filings less the 2009 ending under recovery associated with sales variance of \$24.8 million that will reside in the CCRC. (Foster)

**OPC:** The Citizens do not object to PEF's requested cost recovery being lower. At this time we do not have a position on the determination of carrying costs associated with voluntary deferral of costs already approved.

**PCS**

**PHOSPHATE:** Adopts OPC's position (Bradford)

**FIPUG:** Concurs with OPC.

**SACE:** No position.

**FEA:** No position.

**STAFF:** No position at this time.

**ISSUE 32A:** **If the answer to Issue 32 is yes, what is the total jurisdictional amount to be included in establishing PEF's 2010 Capacity Cost Recovery Clause factor?**

**PEF:** The total jurisdictional amount to be included in establishing PEF's 2010 Capacity Cost Recovery Clause factor should be \$236,251,017 inclusive of sales variances from prior periods or \$213,238,415 with sales variances removed (before revenue tax multiplier). PEF has updated its position below to facilitate identifying over/under recoveries associated with the sales variance that will reside in the CCRC if the stipulation on issue 1 is approved. Other impacts from implementing the policy decisions in issues 1-3 will be captured as part of the normal true up process.

**CR3 Uprate 2010 Revenue Requirement Summary**

	<b>2006-2008 True Up</b>	<b>2009 A/E True Up</b>	<b>2010 Projected</b>	<b>Total</b>
O&M	(95,044)	7,292,431	214,203	7,411,590
Carrying Costs	64,444	(1,674,082)	5,325,702	3,716,064
Plant In-service	73,606	1,242,555		1,316,161
CCRC Variance (due to sales variance)			(1,774,957)	(1,774,957)
Total Uprate 366.93 Revenue Requirements	43,006	6,860,904	3,764,948	10,668,858

**Levy 2010 PEF Alternative NCRC Recovery Revenue Requirement Summary**

	<b>2006-2008 True Up</b>	<b>2009 A/E True Up</b>	<b>2010 Projected</b>	<b>Total</b>
Site Selection & Preconstruction Additions	(65,763,507)	165,278,803	106,122,607	205,637,903
O&M	2,305,178	3,688,174	4,433,053	10,426,405
Carrying Costs	(2,317,719)	(27,301,323)	55,291,066	25,672,024
Order No. 09-0208 Deferral			198,000,000	198,000,000
CCRC Variance (due to sales variance)			24,787,559	24,787,559
Total Levy 366.93 Revenue Requirements	(65,776,048)	141,665,654	388,634,285	464,523,891
Less: Proposed Deferral				(273,889,606)
Plus: 2010 Amortization of Proposed Deferral				34,947,874
Proposed Levy Revenue Requirements for 2010 CCRC				225,582,159

**OPC:** No position.

**PCS**

**PHOSPHATE:** No position.

**FIPUG:** No position.

**SACE:** No position.

**FEA:** No position.

**STAFF:** No position at this time.

**ISSUE 32B: If the answer to Issue 32 is no, what is the total jurisdictional amount to be included in establishing PEF's 2010 Capacity Cost Recovery Clause factor?**

**PEF:** The total jurisdictional amount to be included in establishing PEF's 2010 Capacity Cost Recovery Clause factor should be \$445,995,790 inclusive of sales variances from prior periods or \$422,983,188 with sales variances removed (before revenue tax multiplier). PEF has updated its position below to facilitate identifying over/under recoveries associated with the sales variance that will reside in the CCRC if the stipulation on issue 1 is approved. Other impacts from implementing the policy decisions in issues 1-3 will be captured as part of the normal true up process.

<b>CR3 Uprate 2010 Revenue Requirement Summary</b>				
	<b>2006-2008 True Up</b>	<b>2009 A/E True Up</b>	<b>2010 Projected</b>	<b>Total</b>
O&M	(95,044)	7,292,431	214,203	7,411,590
Carrying Costs	64,444	(1,674,082)	5,325,702	3,716,064
Plant In-service	73,606	1,242,555		1,316,161
CCRC Variance (due to sales variance)			(1,774,957)	(1,774,957)
Total Uprate 366.93 Revenue Requirements	43,006	6,860,904	3,764,948	10,668,858

<b>Levy 2010 Traditional NCRC Recovery Revenue Requirement Summary</b>				
	<b>2006-2008 True Up</b>	<b>2009 A/E True Up</b>	<b>2010 Projected</b>	<b>Total</b>
Site Selection & Preconstruction Additions	(65,763,507)	165,278,803	106,122,607	205,637,903
O&M	2,305,178	3,688,174	4,433,053	10,426,405
Carrying Costs	(2,317,719)	(27,301,323)	26,094,107	(3,524,935)
Order No. 09-0208 Deferral			198,000,000	198,000,000
CCRC Variance (due to sales variance)			24,787,559	24,787,559
Total Levy 366.93 Revenue Requirements	(65,776,048)	141,665,654	359,437,326	435,326,932

**OPC:** No position.

**PCS**  
**PHOSPHATE:** No position.

**FIPUG:** No position.

**SACE:** No position.

**FEA:** No position.

**STAFF:** No position at this time.

IX. EXHIBIT LIST

**FLORIDA POWER & LIGHT**

<u>Witness</u>	<u>Proffered By</u>	<u>Description</u>
<b><u>Direct</u></b>		
Steven D. Scroggs	FPL	SDS-1 (March) Appendix II Nuclear Cost Recovery Turkey Point 6&7 Pre-Construction Costs Nuclear Filing Requirement (NFR's) T-Schedules January 2007-December 2008
Steven D. Scroggs	FPL	SDS-2 (March) Appendix III-Nuclear Cost Recovery Turkey Point 6&7 Site Selection Costs Nuclear Filing Requirements (NFR's) T-Schedules January 2006-December 2008
Steven D. Scroggs	FPL	SDS-3 (March) Turkey Point 6&7 Licenses, Permits and Approvals
Steven D. Scroggs	FPL	SDS-4 (March) Turkey Point 6&7 Procedures and Work Instructions
Steven D. Scroggs	FPL	SDS-5 (March) Turkey Point 6&7 Reports
Steven D. Scroggs	FPL	SDS-6 (March) Turkey Point 6&7 Project Instructions and Forms Lists
Steven D. Scroggs	FPL	SDS-7 (March) Turkey Point 6&7 Site Selection Study
Steven D. Scroggs	FPL	SDS-8 (March) Turkey Point 6&7 Engineering Evaluation
Steven D. Scroggs	FPL	SDS-9 (March) Current Technology Options for New Nuclear Power Generation

<u>Witness</u>	<u>Proffered By</u>		<u>Description</u>
Steven D. Scroggs	FPL	SDS-1 (May)	Appendix II-Nuclear Cost Recovery Turkey Point 6&7 Pre-Construction Nuclear Filing Requirements (NFR's) AE-Schedules (Actual/Estimate) P-Schedules (Projections) TOR-Schedules (True-up to Original) January 2009-December 2010
Steven D. Scroggs	FPL	SDS-2 (May)	Appendix III-Nuclear Cost Recovery Turkey Point 6&7 Site Selection Nuclear Filing Requirements (NFR's) AE-Schedules (Actual/Estimate) P-Schedules (Projections) TOR-Schedules (True-up to Original) January 2009-December 2010
Steven D. Scroggs	FPL	SDS-3 (May)	List of Advanced Nuclear Technology 2008 Products and Activities
Steven D. Scroggs	FPL	SDS-4 (May)	2009 Actual/Estimated and 2010 Projected Costs Summary Tables
Rajiv S. Kundalkar	FPL	RSK-1 (March)	Appendix I Nuclear Cost Recovery Extended Power Uprate Project Nuclear Filing Requirements (NFR's) T-Schedules January 2008-December 2008
Rajiv S. Kundalkar	FPL	RSK-2 (March)	EPU Forged Generator Rotor
Rajiv S. Kundalkar	FPL	RSK-3 (March)	High Pressure Feedwater Heater
Rajiv S. Kundalkar	FPL	RSK-4 (March)	EPU Instructions, EPPI Index

<u>Witness</u>	<u>Proffered By</u>	<u>Description</u>
Rajiv S. Kundalkar	FPL RSK-5 (March)	St. Lucie Units 1&2-Uprate Activity
Rajiv S. Kundalkar	FPL RSK-1 (May)	Appendix 1-Nuclear Cost Recovery Extended Power Update Project Nuclear Filing Requirements (NFR's) AE-Schedules (Actual/Estimate) P-Schedules (Projections) TOR-Schedules (True-up to Original) January2009-December 2010
Rajiv S. Kundalkar	FPL RSK-2 (May)	EPU Outage and Online Activities
Rajiv S. Kundalkar	FPL RSK-3&4 (May)	Ultrasonic Flow Metering Hydrostatic Pressure testing of the System
Rajiv S. Kundalkar	FPL RSK-5 (May)	Old High Pressure Turbine Rotor Removal
Rajiv S. Kundalkar	FPL RSK-6 (May)	New High Pressure Turbine Rotor Installation
Rajiv S. Kundalkar	FPL RSK-7 (May)	Old Moisture Separator Reheater Tube Removal
Rajiv S. Kundalkar	FPL RSK-8 (May)	New Moisture Separator Reheater Tubes to be installed
Rajiv S. Kundalkar	FPL RSK-9 (May)	EPU Plant In Service
Steven R. Sim	FPL SRS-1	Comparison of Key Assumptions Utilized in 2008 and 2009 Economic Analyses of FPL Nuclear Projects
Steven R. Sim	FPL SRS-2	The Two Resource Plans Utilized in the 2009 Feasibility Analyses of the Nuclear Uprates

<u>Witness</u>	<u>Proffered By</u>		<u>Description</u>
Steven R. Sim	FPL	SRS-3	2009 Feasibility Analyses Results for the Nuclear Uprates: Total Costs and Total Differentials for All Fuel and Environmental compliance Cost Scenarios in 2009
Steven R. Sim	FPL	SRS-4	The Two Resource Plans Utilized in the 2009 Feasibility Analyses of Turkey Point 6&7
Steven R. Sim	FPL	SRS-5	2009 Feasibility Analyses Results for Turkey Point 6&7; Total Costs, Total Differentials and Breakeven Costs for All Fuel and Environmental Compliance Cost Scenarios in 2009 and Breakeven Costs in 2007
Winnie Powers	FPL	WP-1 (March)	Revenue Requirements by Year
Winnie Powers	FPL	WP-2 (March)	Costs by Year for Prudence Determination
Winnie Powers	FPL	WP-3 (March)	Incremental Labor Guidelines
Winnie Powers	FPL	WP-1 (May)	Costs Presented in Docket #090009-EI
Winnie Powers	FPL	WP-2 (May)	Base Rate Revenue Requirement Impacts-Uprate Project
John J. Reed	FPL	JJR-1 (March)	Resume of John J. Reed
John J. Reed	FPL	JJR-2 (March)	Expert Testimony of John J. Reed
John J. Reed	FPL	JJR-3 (March)	Comparison of Cost Estimates for New AP 1000 Reactors

<u>Witness</u>	<u>Proffered By</u>		<u>Description</u>
John J. Reed	FPL	JJR-1 (May)	Internal Controls Review
William R. Jacobs, Jr. Ph.D.	OPC	WRJ-1	Resume of William R. Jacobs, Jr.
William R. Jacobs, Jr. Ph.D.	OPC	WRJ-2	Referenced Documents
Dr. Mark Cooper	SACE	MNC-1	Impact of Declining Demand on Summer Peak Load
Dr. Mark Cooper	SACE	MNC-2	Natural Gas Wellhead, Henry Hub and Futures Prices
Dr. Mark Cooper	SACE	MNC-3	Projected Natural Gas Prices Compared to NYMEX Futures Prices
Dr. Mark Cooper	SACE	MNC-4	Projections of Carbon Compliance Costs
Dr. Mark Cooper	SACE	MNC-5	Estimates of Cost of Alternatives to Meet Electricity Needs
Dr. Mark Cooper	SACE	MNC-6	Estimates of Cost of Alternatives to Meet
Dr. Mark Cooper	SACE	MNC-7	Impact of Climate Policy on Peak Load: FPL
Dr. Mark Cooper	SACE	MNC-8	Impact of Climate Policy on Peak Load: Progress
Dr. Mark Cooper	SACE	MNC-9	Estimates of Nuclear Reactor Overnight Costs:
Dr. Mark Cooper	SACE	MNC-10	Nuclear Operators, Reactors Cancellations and Moody's Downgrades
Dr. Mark Cooper	SACE	MNC-11	Standard and Poor's Credit Profile Considerations
Dr. Mark Cooper	SACE	MNC-12	Diversity of Resource Under Various Technology Scenarios

<u>Witness</u>	<u>Proffered By</u>		<u>Description</u>
Dr. Mark Cooper	SACE	MNC-13	The 1\$/KW Cost Factor
Dr. Mark Cooper	SACE	MNC-14	The Narrow Margin in FPL's Breakeven Analysis
Dr. Mark Cooper	SACE	MNC-15	Curriculum Vitae of Dr. Mark Cooper
Arnold Gundersen	SACE	AG-1	Curriculum Vitae of Arnold Gundersen
Arnold Gundersen	SACE	AG-2	NuStart Letter
Arnold Gundersen	SACE	AG-3	Moody's 2009
Arnold Gundersen	SACE	AG-4	Regulatory Risks
Arnold Gundersen	SACE	AG-5	COMESCY-09-0003
Arnold Gundersen	SACE	AG-6	NRC Jaczko Speech
Arnold Gundersen	SACE	AG-7	2007 ANS Annual Meeting
Arnold Gundersen	SACE	AG-8	Finnish Nuclear Trouble
Arnold Gundersen	SACE	AG-9	NRC Scheduling Letter 7/28/09
Lynn Fisher and David Rich	Staff	FR-1	Review of Florida Power & Light's Project Management Internal Controls for Nuclear Plant Uprate and Construction Projects, July 2009
<b><u>Rebuttal</u></b>			
Steven D. Scroggs	FPL	SDS-5	FPL-BVZ Engineering Services Agreement Scope of Work and BVZ Costs by Scope and Year
Steven D. Scroggs	FPL	SDS-6	Excerpt from Witness Gundersen's deposition by Progress Energy Florida

<u>Witness</u>	<u>Proffered By</u>		<u>Description</u>
Rajiv S. Kundalkar	FPL	RSK-10	Nuclear Policy 703, Long Range Plans
Rajiv S. Kundalkar	FPL	RSK-11	Nuclear Plant Overview
Rajiv S. Kundalkar	FPL	RSK-12	Turkey Point Unit 3 Overview
Steven R. Sim	FPL	SRS-6	Screening Curve Analysis
Steven R. Sim	FPL	SRS-7	Alternate Calculations for Witness Cooper's "Diversity of Resource Analysis".
John J. Reed	FPL	JJR-2	The Contract Price/Owner Contingency Dynamic
John J. Reed	FPL	JJR-3	Nuclear Reactors under Construction, Planned or Proposed
John J. Reed	FPL	JJR-4	NYMEX Natural Gas Futures Prices

**PROGRESS ENERGY FLORIDA**

**Direct**

Will Garrett	PEF	WG-1	Schedules T-1 through T-10, which reflect PEF's retail revenue requirements for the LNP from January 2008 through December 2008 (Gary Furman and Garry Miller sponsoring portions of T-6 through T-8b)
Will Garrett	PEF	WG-2	Schedules T-1 through T-10, reflecting PEF's retail revenue requirements for the CR3 Uprate for period January 2008 through December 2008 (Jon Franke sponsoring T-6 through T-8B)

<u>Witness</u>	<u>Proffered By</u>		<u>Description</u>
Geoff Foster	PEF	TGF-1	Schedules AE-1 through AE-10, which reflect PEF's retail revenue requirements for the LNP from January 2009 through December 2009 (Gary Furman and Garry Miller sponsoring portions of AE-6 through AE-8A)
Geoff Foster	PEF	TGF-2	Schedules P-1 through P-10 and Appendix A and B, which reflect PEF's projected retail revenue requirements for the LNP for January 2010 through December 2010 (Garry Miller and Gary Furman P-6 through P-9)
Geoff Foster	PEF	TGF-3	Schedule Appendix P-1 through P-10, which reflect PEF's retail revenue requirements for the LNP for January through December 2010 under PEF's alternate recovery proposal
Geoff Foster	PEF	TGF-4	Schedules AE-1 through AE-10 and Appendix A, which reflect PEF's retail revenue requirements for the CR3 Uprate Filing from January 2009 through December 2009 (Jon Franke sponsoring portions of AE-6 through AE-8A)

<u>Witness</u>	<u>Proffered By</u>		<u>Description</u>
Geoff Foster	PEF	TGF-5	Schedules P-1 through P-10 and Appendix A and B, which reflect PEF's projected retail review requirements for the Crystal River Unit 3 (CR3) Uprate filing for January 2010 through December 2010 (Jon Franke sponsoring portions of P-6 through P-8A and portions of Appendix B)
Geoff Foster	PEF	TGF-6	Schedules TOR-1 through TOR-7, which reflect the actual and projected costs of CR3 Uprate project from January 2006 through December 2012 (Jon Franke sponsoring portions of TOR-6 through TOR-7)
Geoff Foster	PEF	TGF-7	Schedule Appendix Summary of projected 2010 revenue requirements and rate impact estimates
Jon Franke (adopting Huntington)	PEF	SH-1	EPU Equipment Replacement List
Gary Doughty	PEF	GRD-1	Janus Management technical consulting firm services
Gary Doughty	PEF	GRD-2	Resume of Gary R. Doughty
Gary Doughty	PEF	GRD-3	Testimony experience in management prudence reviews
Gary Doughty	PEF	GRD-4	Outage and major capital project experience
Gary Doughty	PEF	GRD-5	Key LNP documents reviewed and approved by the Senior Management Committee

<u>Witness</u>	<u>Proffered By</u>		<u>Description</u>
Gary Doughty	PEF	GRD-6	Example contractor oversight reports to management
Garry Miller	PEF	GM-1	PEF Nuclear Cost Recovery Filing
Garry Miller	PEF	GM-2	Updated Environmental Forecast
William R. Jacobs, Jr. Ph.D	OPC	WRJ-1	Resume of William R. Jacobs, Jr.
William R. Jacobs, Jr. Ph.D	OPC	WRJ-2	Resumes of James P. McGaughy and Cary Cook
William R. Jacobs, Jr. Ph.D	OPC	WRJ-3	Referenced Documents
Dr. Mark Cooper	SACE	MNC-1	Impact of Declining Demand on Summer Peak Load
Dr. Mark Cooper	SACE	MNC-2	Natural Gas Wellhead, Henry Hub and Futures Prices
Dr. Mark Cooper	SACE	MNC-3	Projected Natural Gas Prices Compared to NYMEX Futures Prices
Dr. Mark Cooper	SACE	MNC-4	Projections of Carbon Compliance Costs
Dr. Mark Cooper	SACE	MNC-5	Estimates of Cost of Alternatives to Meet Electricity Needs
Dr. Mark Cooper	SACE	MNC-6	Estimates of Cost of Alternatives to Meet
Dr. Mark Cooper	SACE	MNC-7	Impact of Climate Policy on Peak Load: FPL
Dr. Mark Cooper	SACE	MNC-8	Impact of Climate Policy on Peak Load: Progress
Dr. Mark Cooper	SACE	MNC-9	Estimates of Nuclear Reactor Overnight Costs:

<u>Witness</u>	<u>Proffered By</u>		<u>Description</u>
Dr. Mark Cooper	SACE	MNC-10	Nuclear Operators, Reactors Cancellations and Moody's Downgrades
Dr. Mark Cooper	SACE	MNC-11	Standard and Poor's Credit Profile Considerations
Dr. Mark Cooper	SACE	MNC-12	Diversity of Resource Under Various Technology Scenarios
Dr. Mark Cooper	SACE	MNC-13	The 1\$/KW Cost Factor
Dr. Mark Cooper	SACE	MNC-14	The Narrow Margin in FPL's Breakeven Analysis
Dr. Mark Cooper	SACE	MNC-15	Curriculum Vitae of Dr. Mark Cooper
Arnold Gundersen	SACE	AG-1	Curriculum Vitae of Arnold Gundersen
Arnold Gundersen	SACE	AG-2	NuStart Letter
Arnold Gundersen	SACE	AG-3	Moody's 2009
Arnold Gundersen	SACE	AG-4	Regulatory Risks
Arnold Gundersen	SACE	AG-5	COMESCY-09-0003
Arnold Gundersen	SACE	AG-6	NRC Jaczko Speech
Arnold Gundersen	SACE	AG-7	2007 ANS Annual Meeting
Arnold Gundersen	SACE	AG-8	Finnish Nuclear Trouble
Arnold Gundersen	SACE	AG-9	NRC Scheduling Letter 7/28/09
Peter A. Bradford	PCS	PAB-1	Resume of Peter A. Bradford
Peter A. Bradford	PCS	PAB-2	Natural Gas Prices Comparison
Peter A. Bradford	PCS	PAB-3	NRC AP1000 Schedule Revision Correspondence

<u>Witness</u>	<u>Proffered By</u>		<u>Description</u>
Jeffery A. Small	Staff	JAS-1	Audit Report to address the pre-construction costs as of December 31, 2007, for Levy County Units 1&2
Jeffery A. Small	Staff	JAS-2	Audit Report for 2008 power uprate costs for the Crystal River Unit 3 nuclear power plant
Jeffery A. Small	Staff	JAS-3	Audit Report to address the site selection, pre-construction, and construction costs as of December 31, 2008, for Levy County Units 1 & 2
William Coston and Carl Vinson (adopting Geoff Cryan) Joint Testimony	Staff	CC-1	Review of Progress Energy Florida's Project Management Internal Controls of Nuclear Plant Uprate and Construction Projects, July 2009
<b><u>Rebuttal</u></b>			
Jon Franke	PEF	JF-1	Excerpts of the Jacobs' Deposition in this proceeding
Gary Furman	PEF	GF-1	Testimony of Dale Oliver in Support of Site Selection Costs, filed in Docket 080009
Will Garrett	PEF	WG-3	Will Garrett's April 22, 2008 Direct Testimony filed Docket 080009
Will Garrett	PEF	WG-4	Testimony of Lori Cross in Support of Site Selection Costs, filed in Docket 080009
Will Garrett	PEF	WG-5	Rebuttal Testimony of Will Garrett, filed in Docket 080009

<u>Witness</u>	<u>Proffered By</u>		<u>Description</u>
Garry Miller	PEF	GM-3	Testimony of Daniel Roderick in support of actual site selection costs incurred for LNP, filed in Docket 080009
Garry Miller	PEF	GM-4	Testimony of Garry Miller in support of actual costs incurred in 2006 and 2007 for the LNP, filed in Docket 080009
Garry Miller	PEF	GM-5	Excerpts of the Jacobs Deposition, witness for the Office of Public Counsel (“OPC”), taken July 27, 2009 in this proceeding
Garry Miller	PEF	GM-6	PEF Response to OPC Third Set of Interrogatories to PEF, No. 36
Garry Miller	PEF	GM-7	PEF Responses to Staff Fourth Set of Interrogatories to PEF, No. 39 and PCS Phosphate’s First Set of Interrogatories to PEF, No. 6
Garry Miller	PEF	GM-8	October 6, 2008 NRC letter from Brian Anderson, Lead Project Manager, to Mr. James Scarola, Senior Vice President and Chief Nuclear Officer, Progress Energy, Inc.
Garry Miller	PEF	GM-9	Excerpts of NRC Official Transcript of Proceedings, Levy Nuclear Plant Combined License Application Public Meeting: Afternoon Session, Docket No. 52-029 and 52-030, December 4, 2008 at Crystal River, Florida

<u>Witness</u>	<u>Proffered By</u>		<u>Description</u>
Garry Miller	PEF	GM-10	Progress Energy correspondence with the NRC regarding the NRC resolution of the CH2MHILL quality assurance
Garry Miller	PEF	GM-11	June 2009 Consortium Monthly Project Status Report
Garry Miller	PEF	GM-12	PEF Response to PCS Phosphate's First Set of Interrogatories to PEF, No. 10
Hugh Thompson	PEF	HT-1	Hugh Thompson Curriculum Vitae
Hugh Thompson	PEF	HT-2	December 3, 2008 Meeting Slides, "Levy Nuclear Plant Limited Work Authorization Scope" also found at www.nrc.gov, NRC ADAMS #ML090760470
Hugh Thompson	PEF	HT-3	Excerpt of the NRC December 4, 2008 public scoping meeting transcript
Hugh Thompson	PEF	HT-4	Table that lists 127 power uprates that have been approved by the NRC
Jeffrey Lyash	PEF	JL-1	Excerpts of the Jacobs Deposition, witness for the Office of Public Counsel ("OPC"), taken July 27, 2009 in this proceeding

<u>Witness</u>	<u>Proffered By</u>		<u>Description</u>
Jeffrey Lyash	PEF	JL-2	PEF's response to Commission Staff's Second Set of Interrogatories requesting an updated cumulative life-cycle net present worth revenue requirements calculation for the LNP compared to the cumulative life-cycle net present worth revenue requirements cost-effectiveness analysis presented in the Need Determination Proceeding for Levy Units 1 and 2

Parties and Staff reserve the right to identify additional exhibits for the purpose of cross-examination.

X. PROPOSED STIPULATIONS

The issues identified below are proposed Category II stipulations, among FPL, PEF, and staff; between FPL and staff; or between PEF and staff. The Intervenors have taken no position on these issues. Proposed Category II stipulations include:

*Policy and Legal - Proposed Category II Stipulated Issue among FPL, PEF, and Staff*

**ISSUE 1:** **Should over or under collections in the Capacity Cost Recovery Clause be included in the calculation of recoverable costs in the NCRC?**

**POSITION:** No. Rule 25-6.0423 defines the appropriate costs to be recovered in the NCRC. That definition does not include CCRC over or under collections. Over and under collections in the CCRC should remain in the CCRC, because they are the result of over/under collections of actual sales revenues that are greater than or less than costs to be recovered in the CCRC, and will incur interest at the commercial paper rate. Prospectively, if the Commission approves deferral of collection of certain NCRC costs and thereby removes them from rates, they should not be reflected in the Capacity Cost Recovery Clause over or under recovery. Differences between the NCRC actual costs incurred and the actual/estimated or projected costs will be included in the calculation of

recoverable costs in the NCRC, and will accrue a carrying charge at the fixed rate provided for pursuant to Section 366.93, F.S., until recovered in a future period.

***Florida Power & Light Company - Proposed Category II Stipulated Issues between FPL and Staff***

**ISSUE 4:** Should the Commission find that for the years 2006 and 2007, FPL's accounting and costs oversight controls were reasonable and prudent for the Turkey Point Units 6 & 7 project?

**POSITION:** For the years 2006 and 2007, FPL's accounting and costs oversight controls were reasonable and prudent for the Turkey Point Units 6 & 7 project.

**ISSUE 5:** Should the Commission find that for the years 2006 and 2007, FPL's project management, contracting, and oversight controls were reasonable and prudent for the Turkey Point Units 6 & 7 project?

**POSITION:** Yes. For the years 2006 and 2007, FPL's project management, contracting, and oversight controls were reasonable and prudent for the Turkey Point Units 6 & 7 project.

**ISSUE 6:** Should the Commission find that for the year 2008, FPL's accounting and costs oversight controls were reasonable and prudent for the Turkey Point Units 6 & 7 project and the Extended Power Uprate project?

**POSITION:** Yes. For the year 2008, FPL's accounting and costs oversight controls were reasonable and prudent for Turkey Point Units 6 & 7 project and the Extended Power Uprate project.

**ISSUE 9:** Should the Commission approve what FPL has submitted as its annual detailed analyses of the long-term feasibility of completing the EPU project, as provided for in Rule 25-6.0423, F.A.C.?

**POSITION:** Yes. The analyses support a conclusion that completing the EPU project is feasible.

**ISSUE 10:** What system and jurisdictional amounts should the Commission approve as FPL's final 2008 prudently incurred costs for the Extended Power Uprate project?

**POSITION:** The 2008 prudently incurred system EPU costs are \$99,754,304 in expenses and \$269,184 in O&M expenses. The resultant jurisdictional costs, net of joint owner and other adjustments, are \$95,097,049 for capital expenses, \$2,357,995 in carrying charges, and \$256,091 in O&M expenses.

For purposes of the CCRC, the final 2008 NCRC true up amount, is an over estimate of \$1,375,009 in carrying costs plus an under estimate of \$256,091 in O&M expenses. The net amount of -\$1,118,918 should be included in setting the allowed 2010 NCRC recovery.

**ISSUE 14:** **What system and jurisdictional amounts should the Commission approve as FPL's final 2006 and 2007 prudently incurred costs for the Turkey Point Units 6 & 7 project?**

**POSITION:** The 2006 and 2007 prudently incurred system Turkey Point Units 6 & 7 costs are \$8,651,370 (\$8,615,263 jurisdictional) in expenses and \$0 in O&M expenses. The resultant jurisdictional carrying costs are \$155,189.

For purposes of the CCRC, the final 2007 NCRC trueup amount, is an over estimate of \$304,739 in expenses and \$7,216 in carrying costs. The net amount of -\$311,955 should be included in setting the allowed 2010 NCRC recovery.

**ISSUE 15:** **What system and jurisdictional amounts should the Commission approve as FPL's final 2008 prudently incurred costs for the Turkey Point Units 6 & 7 project?**

**POSITION:** The 2008 prudently incurred system Turkey Point Units 6 & 7 costs are \$47,215,633 (\$47,049,854 jurisdictional) in expenses and \$0 in O&M expenses. The associated 2008 jurisdictional carrying costs are \$2,886,482.

For purposes of the CCRC, the final 2008 NCRC true up amount, is an over estimate of \$22,658,001 in expenses and \$1,171,701 in carrying costs. The net amount of -\$23,829,702 should be included in setting the allowed 2010 NCRC recovery.

***Progress Energy Florida, Inc. - Proposed Category II Stipulated Issues between PEF and Staff***

**ISSUE 19:** **Should the Commission find that for the years 2006 and 2007, PEF's accounting and costs oversight controls were reasonable and prudent for the Levy Units 1 & 2 project?**

**POSITION:** Yes. For the years 2006 and 2007, PEF's accounting and costs oversight controls were reasonable and prudent for the Levy Units 1 & 2 project.

**ISSUE 20:** Should the Commission find that for the years 2006 and 2007, PEF's project management, contracting, and oversight controls were reasonable and prudent for the Levy Units 1 & 2 project?

**POSITION:** Yes. For the years 2006 and 2007, PEF's project management, contracting, and oversight controls were reasonable and prudent for the Levy Units 1 & 2 project.

**ISSUE 22:** Should the Commission find that for the year 2008, PEF's accounting and costs oversight controls were reasonable and prudent for the Levy Units 1 & 2 project and the Crystal River Unit 3 Uprate project?

**POSITION:** Yes. For the year 2008, PEF's accounting and costs oversight controls were reasonable and prudent for Levy Units 1 & 2 project and the Crystal River Unit 3 Uprate project.

**ISSUE 24:** Should the Commission approve what PEF has submitted as its annual detailed analysis of the long-term feasibility of completing the Crystal River Unit 3 Uprate project, as provided for in Rule 25-6.0423, F.A.C.?

**POSITION:** Yes. The analyses support a conclusion that completing the Crystal River Unit 3 Uprate project is feasible.

**ISSUE 25:** What system and jurisdictional amounts should the Commission approve as PEF's final 2008 prudently incurred costs for the Crystal River Unit 3 Uprate project?

**POSITION:** The 2008 prudently incurred total system costs are \$65,137,303 for capitalized expenses and \$180,076 in O&M expenses. The resultant jurisdictional costs are \$43,898,888 for capital expenses, \$6,133,922 in carrying charges, and \$166,588 in O&M expenses.

For purposes of the CCRC, the final 2008 NCRC trueup amount, is an under estimate of \$64,444 in carrying costs plus an over estimate of \$95,044 in O&M expenses plus an under estimate of \$73,606 for base rates associated with a completed phase of the project. The net amount of \$43,006 should be included in setting the allowed 2010 NCRC recovery.

**ISSUE 27:** What system and jurisdictional amounts should the Commission approve as PEF's reasonably projected 2010 costs for the Crystal River Unit 3 Uprate project?

**POSITION:** A reasonable projection of 2010 system Crystal River Unit 3 Uprate costs are \$49,872,156 for capitalized expenses and \$244,268 in O&M expenses. The resultant jurisdictional costs, net of joint owner and other adjustments, are \$58,380,739 for capital expenses, \$5,325,702 in carrying charges, and \$214,203 in O&M expenses. The net amount of \$5,539,905 should be included in setting the allowed 2010 NCRC recovery.

**ISSUE 28:** What system and jurisdictional amounts should the Commission approve as PEF's final 2006 and 2007 prudently incurred costs for the Levy Units 1 & 2 project as filed in Docket No. 080009-EI?

**POSITION:** The 2006 and 2007 prudently incurred system Levy Units 1 & 2 project costs are \$87,406,779 (\$71,828,329 jurisdictional) in expenses and \$707,867 (\$547,473 jurisdictional) in O&M expenses. The resultant jurisdictional carrying costs are \$2,965,965.

Mr. Small has testified that there are three methodologies to allocate costs for the Lybass parcel, and that PEF has used one of those methodologies to make that allocation. Mr. Small does not testify that one methodology is preferable to any other methodology.

The final true up of \$19,780,695 was included in setting PEF's 2009 NCRC recovery amount. Consequently, the net true up amount of \$0 should be used in setting the allowed 2010 NCRC recovery amount.

**ISSUE 29:** What system and jurisdictional amounts should the Commission approve as PEF's final 2008 prudently incurred costs for the Levy Units 1 & 2 project?

**POSITION:** The prudently incurred 2008 system Levy Units 1 & 2 project costs are \$155,306,978 (\$138,609,648 jurisdictional) in expenses and \$4,167,550 (\$3,784,810 jurisdictional) in O&M expenses. The associated 2008 jurisdictional carrying costs are \$20,717,072.

For purposes of the CCRC, the final 2008 NCRC true up amount is an over estimate of \$65,763,507 in expenses plus an under estimate of \$2,305,178 in O&M expenses plus an over estimate of \$2,317,719 in carrying costs. The net amount of -\$65,776,048 should be included in setting the allowed 2010 NCRC recovery.

XI. PENDING MOTIONS**FPL:**

<b>Document No.</b>	<b>Date</b>	<b>Description</b>
07863-09	7/31/09	Joint Petition for Variance from or Partial Waiver of Rule 25-6.0423(5)(c)4
07034-09	7/14/09	Motion for temporary protective order of certain confidential information in responses to OPC's 3rd request for PODs (Nos. 53, 56, 57, and 59)
06437-09	6/26/09	Motion for temporary protective order of certain information included in responses to OPC's 2nd request for PODs (Nos. 38, 43, 45, 46, 49, and 52)
05068-09	5/21/09	Motion for temporary protective order of confidential information contained in 5/1/09 testimony of FPL Witness Reed and in Exhibits JJR-1, RSK-1, and SDS-1 (Confidential DN 04144-09)
04590-09	5/12/09	Motion for temporary protective order certain information included in responses to OPC's 1st request for PODs (Nos. 1, 4-6, 8-10, 12-14, 16, 18-20, 22-26, 28, and 32-34); and 1st set of interrogatories (Nos. 5-6, 8, 12, 15, and 20)

XII. PENDING CONFIDENTIALITY MATTERS**FPL:**

<b>Document No.</b>	<b>Date</b>	<b>Description</b>
08271-09	08/10/09	Request for confidential classification of portions of Exhibit SDS-5 in the rebuttal testimony of FPL Witness Scroggs
08184-09	08/07/09	Request for confidential classification of portions of testimony of OPC witness Jacobs and Exhibit WRJ (FPL)-2
07223-09	07/16/2009	Request for confidential classification of materials provided pursuant to project management audit
06858-09	07/08/2009	Request for confidential classification of materials provided pursuant to Audit No. 08-248-4-2
06127-09	06/19/2009	Request for confidential classification of materials provided pursuant to Audit No. 08-248-4-1
04143-09	05/01/2009	Request for confidential classification of portions of Exhibit SDS-1 to testimony of Steven D. Scroggs; Exhibit RSK-1 to testimony of Rajiv S. Kundalkar; and testimony of John Reed
04051-09	04/30/2009	Request for confidential classification of responses to staff's 2nd request for PODs (Nos. 2 and 3)

**PEF:**

<b>Document No.</b>	<b>Request</b>	<b>Date Filed</b>
04692-09	Request for Confidential Classification regarding Audit Report No. 248-2	5/14/09
05147-09	Third Request for Confidential Classification regarding direct testimony of Garry Miller, portions of exhibits to direct testimony of Thomas Foster, portions of documents produced in response to OPC's 1 <sup>st</sup> Request for Production (Nos. 1-52), OPC's 1 <sup>st</sup> Set of Interrogatories (Nos. 1-19), and Staff's 2 <sup>nd</sup> Request for Production (Nos. 2-11)	5/22/09
05676-09	Fourth Request for Confidential Classification regarding documents produced in response to OPC's 2 <sup>nd</sup> Request for Production of Documents (Nos. 53-59)	6/5/09
06085-09	Fifth Request for Confidential Classification regarding documents produced in response to OPC's 3 <sup>rd</sup> Request for Production of Documents (Nos. 60-64)	6/18/09
06398-09	Sixth Request for Confidential Classification regarding documents produced in response to Staff's 3 <sup>rd</sup> Request for Production of Documents (Nos. 12-21) and Supplemental Response to OPC's 1 <sup>st</sup> Request for Production of Documents (Nos. 1-52)	6/25/09
06698-09	Seventh Request for Confidential Classification regarding response to Staff's 2 <sup>nd</sup> Set of Interrogatories (Nos. 13-33) and documents produced in response to Audit Control No. 08-248-2-1	07/02/09
07087-09	Eighth Request for Confidential Classification regarding response to OPC's 3 <sup>rd</sup> set of Interrogatories (Nos. 28-49) and documents produced in response to OPC's 4 <sup>th</sup> Request for Production of Documents (Nos. 65-47)	7/14/09
07279-09	Ninth Request for Confidential Classification re: the response to OPC's 5 <sup>th</sup> Request for Production of Documents (Nos. 75-80)	7/17/09
07392-09	Tenth Request for Confidential Classification regarding response to Staff's 3 <sup>rd</sup> Set of Interrogatories (Nos. 34-38)	7/21/09
07586-09	Eleventh request for confidential classification regarding the review of Progress' project management internal controls for nuclear plant uprate and construction projects draft report	7/24/09
07727-09	Twelfth request for confidential classification regarding documents provided to PSC's auditor for preparation of review of project management internal controls for nuclear plant uprate and construction projects draft report	7/28/09

<b>Document No.</b>	<b>Request</b>	<b>Date Filed</b>
07721-09	Thirteenth Request for Confidential Classification re Responses OPC 6 <sup>th</sup> Interrogatories (Nos. 65 and 70) and OPC's 7 <sup>th</sup> Request for Production (Nos. 89, 92, 94 and 96)	7/28/09
08011-09	Fourteenth Request for Confidential Classification re Deposition of G. Miller and documents produced in response to White Springs 2 <sup>nd</sup> Request for Production (Nos. 18-19)	8/4/09
08060-09	Fifteenth Request for Confidential Classification re: Supplemental response to White Springs 1 <sup>st</sup> Request for Production (No. 5) and supplemental response to OPC 7 <sup>th</sup> Request for Production (No. 92)	8/5/09
07440-09	Twelfth Notice of Intent to Request Confidential Classification re: Deposition of J. Franke	7/22/09
07526-09	Thirteenth Notice of Intent to Request Confidential Classification re Portions of Jacobs' Testimony and Exhibit WRJ-3	7/23/09
07689-09	Fourteenth Notice of Intent to Request Confidential Classification re PEF Responses to Staff's Fourth Request for Production, specifically No. 28	7/27/09
08183-09	Fifteenth Notice of Intent to Request Confidential Classification re Portions of W. Jacobs' Deposition Transcript taken 7/27/09	8/7/09
08299-09	Sixteenth Notice of Intent re: Portions of Rebuttal Testimony and Exhibits of G. Miller, J. Lyash, and G. Doughty	8/10/09
08641-09	Seventeenth Notice of Intent re: documents produced in response to Staff's 9 <sup>th</sup> Set of Interrogatories, specifically Nos. 66-76	8/19/09
08881-09	Eighteenth Notice of Intent to Request Confidential Classification re: Deposition of W. Jacobs	8/26/09
08931-09	Nineteenth Notice of Intent re: Portions of Rebuttal Testimony and Exhibits of G. Miller, J. Lyash, and G. Doughty	8/28/09

### XIII. POST-HEARING PROCEDURES

If no bench decision is made, each party shall file a post-hearing statement of issues and positions. A summary of each position of no more than 50 words, set off with asterisks, shall be included in that statement. If a party's position has not changed since the issuance of this Prehearing Order, the post-hearing statement may simply restate the prehearing position;

however, if the prehearing position is longer than 50 words, it must be reduced to no more than 50 words. If a party fails to file a post-hearing statement, that party shall have waived all issues and may be dismissed from the proceeding.

Pursuant to Rule 28-106.215, F.A.C., a party's proposed findings of fact and conclusions of law, if any, statement of issues and positions, and brief, shall together total no more than 50 pages and shall be filed at the same time.

XIV. RULINGS

All opening statements, testimony, and exhibits pertaining to FPL's petition shall be taken up first, followed immediately by all opening statements, testimony and exhibits pertaining to PEF's petition. Opening statements, if any, shall not exceed five minutes per party for FPL's petition and shall not exceed ten minutes per party for PEF's petition.

It is therefore,

ORDERED by Commissioner Katrina J. McMurrian, as Prehearing Officer, that this Prehearing Order shall govern the conduct of these proceedings as set forth above unless modified by the Commission.

By ORDER of Commissioner Katrina J. McMurrian, as Prehearing Officer, this 4th day of September, 2009.

  
KATRINA J. McMURRIAN  
Commissioner and Prehearing Officer

(SEAL)

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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.

Mediation may be available on a case-by-case basis. If mediation is conducted, it does not affect a substantially interested person's right to a hearing.

Any party adversely affected by this order, which is preliminary, procedural or intermediate in nature, may request: (1) reconsideration within 10 days pursuant to Rule 25-22.0376, 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 or wastewater utility. A motion for reconsideration shall be filed with the Office of Commission Clerk, in the form prescribed by Rule 25-22.0376, Florida Administrative Code. Judicial review of a preliminary, procedural or intermediate ruling or order is available if review of the final action will not provide an adequate remedy. Such review may be requested from the appropriate court, as described above, pursuant to Rule 9.100, Florida Rules of Appellate Procedure.