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Subject: Filing Docket 090009

Attachments: Docket 090009 PEF Post Hearing Statement.pdf

Docket 090009
EF Post Hearing

<<Docket 090009 PEF Post Hearing Statement.pdf>> Docket 090009 In re: Nuclear Power Plant Cost Recovery Clause

1. This filing is made by

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2. This filing consists of Progress Energy Florida, Inc.'s Post-Hearing Statement of Issues and Positions and Brief in Support of its Petition to Recover Costs of the Crystal River Unit 3 Uprate and The Levy Nuclear Projects as Provided in Section 366.93, Florida Statutes, and Rules 25-6.0423, F.A.C.

3. This filing consists of 27 pages.

4. This filing is been made on behalf of Progress Energy Florida, Inc.

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Nuclear Power Plant Cost Recovery Clause

Docket No. 090009-EI
Submitted for Filing: September 18, 2009

PROGRESS ENERGY FLORIDA, INC.'S POST-HEARING STATEMENT OF ISSUES AND POSITIONS AND BRIEF IN SUPPORT OF ITS PETITION TO RECOVER COSTS OF THE CRYSTAL RIVER UNIT 3 UPRATE AND THE LEVY NUCLEAR PROJECTS AS PROVIDED IN SECTION 366.93, FLORIDA STATUTES, AND RULE 25-6.0423, F.A.C.

Pursuant to Section 366.93, Florida Statutes, and Rule 25-6.0423, Florida Administrative Code, Progress Energy Florida, Inc. ("PEF" or the "Company"), petitioned the Florida Public Service Commission ("PSC" or the "Commission"), to recover its costs for the Crystal River Unit 3 ("CR3") Uprate Project and the Levy Nuclear Project ("LNP") through the Nuclear Cost Recovery Clause ("NCRC"). The Commission held a hearing to consider PEF's cost recovery request on September 8-10, 2009. PEF submits that the record in this case conclusively demonstrates that the requirements of Section 366.93 and Rule 25-6.0423 have been met, that there is no credible dispute as to the respective prudence and reasonableness of PEF's costs, and that the Commission should therefore grant PEF's request.

Pursuant to the Prehearing Order, PEF submits its Post-Hearing Statement of Issues and Positions and its Brief in Support of its Petition to Recover Costs of the CR3 Uprate Project and the Levy Nuclear Project.

I. PEF'S POST-HEARING STATEMENT OF ISSUES AND POSITIONS

1. LEGAL/POLICY ISSUES.

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

PEF Position:
No, as reflected in the stipulation in Section X of the Prehearing Order and as accepted by the Commission.

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?

PEF Position:

*Pursuant to Section 366.93(1)(f) and Rule 25-6.0423(5)(a), a carrying charge equal to the utility's allowance for funds used during construction rate should accrue until costs are recovered in rates. If a utility is permitted to defer collection of costs, they are not recovered and should accrue the above carrying charge. *

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?

PEF Position:

*No, utilities should not be permitted to record in rate base the incremental difference between AFUDC permitted by statute and their most currently approved AFUDC for recovery when the plant enters commercial operation. Section 366.93 fixes the carrying charge at the last approved AFUDC when the need was approved. *

2. FACTUAL ISSUES

PEF Project Management and Oversight

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 Levy Units 1 & 2 project?

PEF Position:

Yes, as reflected in the stipulation in Section X of the Prehearing Order and as accepted by the Commission.

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 Levy Units 1 & 2 project?

PEF Position:

Yes, as reflected in the stipulation in Section X of the Prehearing Order and as accepted by the Commission.

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

PEF Position:

Yes, PEF's 2008 project management, contracting, and oversight controls were reasonable and prudent for the CR3 Uprate project and the LNP. These procedures, designed to ensure timely and cost-effective completion, include regular status meetings, regular risk assessment, evaluation and management, as well as adequate, reasonable policies regarding contracting procedures.

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 Position:

* Yes, PEF acted reasonably and prudently in executing the EPC contract. Execution of the EPC contract in December 2008 preserved benefits obtained after roughly two years of hard-fought negotiations. *

ISSUE 22: Should the Commission find that 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?

PEF Position:

Yes, as reflected in the stipulation in Section X of the Prehearing Order and as accepted by the Commission.

PEF's Project Feasibility

ISSUE 23: Should the Commission approve what PEF has submitted as its annual detailed analyses 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 Position:

*Yes, PEF's submitted annual detailed analysis of the long-term feasibility of completing the LNP should be approved. *

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

PEF Position:

*The Commission should specifically identify the perceived deficiencies and permit re-submission with the additional information and should not disallow any of PEF's requested cost recovery amounts. *

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

PEF Position:

* The Commission has all the information necessary to make a prudence determination on the Company's costs and actions for 2006-2008, and a reasonableness determination on the costs for 2009 and 2010. Therefore the Commission should require nothing else with respect to Levy Units 1 & 2 in this proceeding.*

ISSUE 24: Should the Commission approve what PEF has submitted as its annual detailed analyses 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?

PEF Position:

Yes, as reflected in the stipulation in Section X of the Prehearing Order and as accepted by the Commission.

PEF's Crystal River Unit 3 Uprate Project

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?

PEF Position:

The Commission should approve the amounts reflected in the stipulation in Section X of the Prehearing Order, which has been accepted by the Commission.

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 Position:

*Capital Costs (System) $126,126,306; (Jurisdictional) $91,712,976
O&M Costs (System) $8,108,218; (Jurisdictional) $7,596,559*

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?

PEF Position:

The Commission should approve the amounts reflected in the stipulation in Section X of the Prehearing Order, which has been accepted by the Commission.

PEF's Levy Units 1 & 2 Project

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?

PEF Position:

The Commission should approve the amounts reflected in the stipulation in Section X of the Prehearing Order, which has been accepted by the Commission.

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?

PEF Position:

The Commission should approve the amounts reflected in the stipulation in Section X of the Prehearing Order, which has been accepted by the Commission.

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 Position:

*Capital Costs (System) $316,501,103; (Jurisdictional) $279,598,436
O&M Costs (System) $5,513,853; (Jurisdictional) $4,931,288*

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 Position:

*Capital Costs (System) $188,549,039; (Jurisdictional) $149,520,191
O&M Costs (System) $5,201,011; (Jurisdictional) $4,433,053*

PEF's 2010 Capacity Cost Recovery Clause Amount

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 Position:

Yes, the Commission should approve PEF's alternative cost recovery proposal due to both the current economic climate and to provide the ratepayer some immediate relief as stated in PEF's petition filed May 1, 2009 in Docket # 090009 and presented in the Issue 32 position statement in the prehearing Order.

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 Position:

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). See Appendix A for a breakout of these costs.

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 Position:

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). See Appendix A for a breakout of these costs.

II. BRIEF IN SUPPORT OF PEF'S PETITION

A. Introduction.

In this proceeding the Commission must decide: (1) whether PEF's Levy Nuclear Project 2006-2008 costs were reasonable and prudent; (2) whether PEF's LNP actual/estimated costs for 2009 and projected costs for 2010 are reasonable; (3) whether PEF's Crystal River Unit 3 (CR3) Uprate Project costs for 2008 were reasonable and prudent; (4) whether PEF's CR3 Uprate actual/estimated costs for 2009 and projected costs for 2010 are reasonable; (5) the long-term feasibility of completing the Levy Nuclear Project; and (6) the long-term feasibility of completing the CR3 Uprate.

In support of its Petition, the Company submitted pre-filed direct testimony (nine in total), rebuttal testimony (seven in total), exhibits, and detailed Nuclear Filing Requirement ("NFR") schedules for each category of costs, by year, for both the CR3 Uprate Project and the LNP. PEF's cost recovery request was further subject to Staff audits and discovery by Staff and

Intervenors. Staff audited PEF's project management, contracting, and oversight controls and PEF's accounting and cost oversight controls through two separate extensive audits. PEF produced thousands of pages of documents in response to audit requests from Commission Staff auditors, and presented various project personnel for interviews. PEF also responded to over 200 (plus) interrogatories, produced over sixty-four thousand pages of documents in response to discovery requests, and produced multiple witnesses for deposition. Section 366.93 requires the Commission to allow recovery of these costs unless there is some evidence of imprudence or unreasonableness. The competent, substantial evidence in the record demonstrates that PEF's actual CR3 Uprate Project costs and LNP costs were prudent. In fact, no party presented any evidence that these costs were imprudent; indeed, the two issues regarding the calculation of the 2008 CR3 Uprate and LNP costs (25 and 28) are the subject of Category II stipulations.[1]

The competent, substantial evidence in the record also conclusively demonstrates that PEF's 2009 and 2010 costs for the LNP and CR3 Uprate Project are reasonable. Again, no party presented any evidence that these costs were unreasonable.

Finally, the competent, substantial evidence conclusively demonstrates the long-term feasibility of completing both the LNP and CR3 Uprate projects. In fact, the feasibility analysis regarding the CR3 Uprate project is the subject of a Category II stipulation. As with the 2009 and 2010 projected costs, no party seriously challenged the long-term feasibility of completing these two projects, choosing instead to question the form of the Company's feasibility analyses. However, as the evidence demonstrated, this contention does no more than attempt to elevate form over substance, and ultimately the substance of the evidence demonstrates conclusively the projects' long-term feasibility. As a result, the Commission must approve PEF's request for cost

[1] A "Category II" stipulation is one between PEF and Staff, to which all other parties have taken "No Position."

recovery for its CR3 Uprate Project and LNP costs through the Capacity Cost Recovery Clause factor.

B. CR3 Uprate Project

The CR3 Uprate Project involves the expansion of the power production capability at an existing nuclear power plant. As a result, under the NCRC classification of costs, the only costs at issue in this proceeding are construction costs.

Mr. Franke explained what the major costs incurred and projected to be incurred are for the CR3 Uprate Project in his March 2, 2009 and May 1, 2009 pre-filed testimony. (Tr. 953).[2] These costs were audited, subjected to review and analysis in discovery, and Mr. Franke was deposed and questioned at the hearing. The evidence demonstrates the actual costs incurred are prudent and the expected costs are reasonable. There is no contrary evidence. Indeed, none of the Intervenor witnesses opined that any specific CR3 Uprate cost was imprudent or unreasonable. (Tr. 1484; 1543; 1554-1592; 1627).

The only issue with respect to the CR3 Uprate project came from OPC witness Jacobs, who questioned whether the CR3 Uprate Balance of Plant ("BOP") expenditures would be cost-effective if PEF does not receive NRC approval of its License Amendment Request ("LAR") to uprate CR3 to the full 180 Megawatts ("MW). (Tr. 1497). In such a scenario, CR3 would produce roughly 40 MW of additional power due to improved efficiencies, but would not be authorized to increase the power output by all of the additional 140 MW. (Id.). Witness Jacobs admitted that he did not perform any economic analysis to support this opinion, other than a "back of the envelope" calculation, which he clarified that he in no way relied upon in his

[2] Mr. Huntington's pre-filed testimony, filed with the Commission on March 2, 2009, was subsequently adopted by Mr. Jon Franke. (Tr. 953).

testimony. (Tr. 1497; 1504-05). Jacobs' sole opinion is that the Company should have waited until it had "reasonable assurance" that the NRC would approve its LAR before incurring costs for the project. (Tr. 1471).

However, as explained by Mr. Franke, the Company has received reasonable assurance from the NRC, through its ongoing interaction with the NRC staff and its detailed technical review and analysis in support of its LAR submittal. (Tr. 1666; 1672-73). The Company is prudently managing the risks associated with the LAR and is confident in its submittal. (Tr. 1673-74). Although Witness Jacobs raised concerns in his testimony with respect to four technical issues with respect to the LAR submittal (Tr. 1469), Mr. Franke clarified in rebuttal that all of those issues have been resolved through the very interaction with the NRC staff that provides the Company with reasonable assurance that it will receive approval. (Tr. 1676-80).

The Company also has reasonable assurance that the NRC will approve its LAR, despite the fact that the CR3 Uprate project will be the largest uprate at a Babcock & Wilcox ("B&W") plant. OPC Witness Jacobs made much of the fact that, once up-rated, the CR3 plant will be the largest B&W plant that involves a pressurized water reactor. (Tr. 1468; 1694; 1701). After the uprate, however, PEF will only be about 7 percent above the next-highest rated B&W nuclear plant. (Tr. 1694). In addition, Witness Jacobs has not reviewed PEF's technical and engineering analysis, which has been developed over the last year and a half, in support of the LAR submittal. (Tr. 1675). He simply presented no analysis at all to support his opinion that the B&W design impacts the NRC's review of the LAR. (Id.). By contrast, Mr. Franke set forth in detail why the B&W design does not give reason for any concern with respect to the Company's confidence level in obtaining NRC approval of the LAR. (Tr. 1674-76).

The NRC has been granting power uprates since the 1970's as a way to generate more power from existing nuclear plants. Over 127 power uprates have been approved by the NRC staff with a total of 5,700 MWe. PEF witness Thompson testified, based on his review of the NRC staff annual status update reports since 2001, that there have been no cases where the requested power uprate was not granted. Nor has there been any case where the power level approved by the NRC was smaller than that requested by the licensee. (Tr. 1956).

Witness Jacobs' opinions with respect to the Company's approach to the LAR submittal amounts to nothing more than unsupported speculation. The Company is implementing a reasonable and prudent approach to managing the project, including the risks with respect to its LAR submittal, and thus the Commission should approve all costs for this project that are at issue.

C. Levy Nuclear Project

With respect to the LNP, there are several items for which there are no issues. First, no party disputes any actual costs incurred for the LNP from the years 2006-2008, given the Category II stipulations set forth with respect to Issues 28 and 29.[3] In addition, no one challenges the 2006 and 2007 accounting and cost oversight controls, nor do they challenge the 2006 and 2007 project management, contracting, and oversight controls for the LNP. Indeed, through the Category II stipulations for Issues 19 and 20, Staff and PEF have stipulated that

[3] Staff Witness Small, in his audit report from the 2008 proceeding, noted that there are three methodologies to allocate costs for the Lybass parcel and that PEF used one of those methodologies to make that allocation. As included in the stipulation for Issue 28, because Witness Small did not opine that one methodology was preferable to any other, there is no evidence that PEF's methodology was inappropriate.

these controls were reasonable and prudent. In addition, no party challenges any cost with respect to the Company's transmission costs.

There are only two issues with respect to the LNP: (1) whether PEF was prudent in executing the Engineering, Procurement and Construction (EPC) contract at the end of 2008; and (2) whether PEF has provided a detailed analysis of the feasibility of completing the LNP, in compliance with Rule 25-6.0423. As shown below, the competent and substantial evidence proves that PEF acted prudently with respect to the EPC contract and that the Commission should approve the detailed analysis PEF submitted in support of the LNP feasibility.

(1) The Standard for Determining Prudence

The standard for determining prudence was articulated by this Commission in its Final Order in Docket No. 080009-EI (November 12, 2008) at page 28:

> ". . . the standard for determining prudence is consideration of what a reasonable utility manager would have done, in light of conditions and circumstances which were known, or reasonably should have been known, at the time the decision was made."

Prudence must be determined based on what was known or reasonably should have been known at the time – the use of hindsight is impermissible. It is not appropriate to second guess decisions based on subsequent events or outcomes. Similarly, the prudence standard recognizes that there may be more than one prudent decision under the circumstances.

(2) PEF's Execution Of The EPC Contract Was Reasonable And Prudent.

The decision to execute the EPC contract at the end of 2008 was reasonable and prudent. The evidence clearly shows that doing so preserved key benefits for the Company and its customers, benefits which the Intervenor witnesses chose to ignore. In addition, the Company

did not know and could not have known that the NRC would not review the Limited Work Authorization (LWA) application in the time frame PEF requested. Finally, PEF reasonably expected joint owners to be in place after execution of the EPC contract. In fact, prospective joint owners would expect to have the EPC contract in place prior to making their commitment to a project of this scale.

a. PEF Preserved Key Benefits By Executing The EPC Contract.

As described in the testimony of several witnesses, PEF obtained a number of significant benefits for its customers by signing the EPC agreement in December 2008. (Tr. 1743 (confidential testimony); 2003; 2037; 2039; 2077). PEF obtained these benefits after nearly two years of tough negotiations with Westinghouse and Shaw, Stone & Webster (the "Consortium"). In addition, as explained in the confidential testimony of Mr. Miller and Mr. Lyash, there were additional reasons for PEF to complete those negotiations in 2008 by executing the EPC agreement. (Tr. 1743; 1744-47; 2039; 2041-42 (confidential testimony)).

Those benefits are in the EPC agreement now because the contract was signed in December 2008 and will remain in place. PEF and the Consortium are currently negotiating an amendment to the EPC agreement to accommodate the anticipated schedule change for the project, but the parties are not renegotiating the EPC as suggested by some Intervenor witnesses. There has been no indication in the negotiations that there will be any request to change or modify the benefits. (Tr. 1811-12).

Execution of the EPC agreement was required to keep the LNP on schedule to meet planned in-service dates for the units and to move forward with the project. (Tr. 1744). Even if PEF had known in December 2008 of the delay in the review of the LWA application, which it

did not, PEF would still have executed the EPC agreement and proceeded to amend the agreement under the EPC's contract suspension and amendment provisions just like it is doing now. (Tr. 2052). Having the EPC agreement in place provides an orderly framework for negotiating the amendment and binds the Consortium to dealing with the various vendors in the process of defining a new schedule for the project. (Id.).

PEF enumerated to OPC and Jacobs in its discovery responses in this case the benefits from signing the EPC agreement in 2008. (Tr. 1487). Despite this knowledge, OPC witness Jacobs chose to ignore completely the benefits from signing the contract -- he did not even acknowledge the benefits in his pre-filed testimony. Moreover, Jacobs admitted that he did no quantitative analysis to weigh the risks versus the benefits of executing the EPC contract. (Tr. 1487-88). Witness Jacobs' criticism of the LNP EPC agreement is particularly suspect, given the fact that he did not even read the EPC contract prior to filing his testimony in this case. (Tr. 1486).

Witness Jacobs also contends that PEF is now forced to renegotiate this EPC contract from a "weak position." As noted above, PEF is negotiating an amendment to the EPC agreement (not the EPC itself) and is negotiating that amendment from position of greater strength than if the contract had not been executed. (Tr. 1747-49 (confidential testimony)). PEF presented testimony from those actually involved in both the negotiation of the EPC contract and the current negotiation of the change order under that contract. (Tr. 1742; 1745; 2043; 2053-54). Compare this to Jacobs, who has no experience in negotiating EPC contracts for nuclear power plants (Tr. 1486) and no experience in negotiating a contract with the Consortium (Tr. 2054). Jacobs could articulate no basis for his opinion that the Company is in a weaker position negotiating the amendment to the executed agreement than it would have been had it walked

away from two years of negotiations and was required to begin negotiating anew without the benefit of the agreement as a starting point.

b. PEF Did Not Know And Could Not Have Known That The NRC Would Not Review The LWA In The Time Frame PEF Requested.

When PEF executed the EPC contract, it reasonably believed that the NRC would review the LWA application in the time frame the Company requested. PEF needed an LWA to begin certain site work prior to the Combined License (COL) issuance and to maintain the scheduled in-service dates for the Levy units. (Tr. 1751; 1753). PEF's LWA scope included work needed to dewater the site and create a flat surface in anticipation of the foundation construction for the units, which will be poured once the COL is issued. (Tr. 1753). As explained in detail by Mr. Miller, PEF had regular contact with the NRC with respect to its LWA application, along with the other parts of its Combined License Application ("COLA"). (Tr. 1762-63). During these interactions, no one at the NRC gave any indication that the NRC would take the same amount of time to review the LWA as it would take to review the COLA. (Tr. 1179; 1230; 1762). PEF allowed about 30 months in its review schedule for the NRC to review a detailed LWA submittal that took the Company 18 months to complete. (Tr. 1761). PEF was therefore shocked when the NRC notified them on January 23, 2009 that it needed 42 months to review the LWA. (Id.).

Jacobs testifies that PEF should not have executed the EPC contract because it did not have the LWA review schedule. (Tr. 1489). This opinion, however, is based on information that came to light after the execution of the contract and further does nothing to address or dispute the substantial benefits that PEF obtained by signing the EPC contract when it did. Jacobs misinterprets the October 6, 2008 docketing letter from the NRC, which he claims should

have made the Company aware that its LWA review would be delayed. (Tr. 1452; 1455; 1456). The October 6 letter, however, refers to the entire LNP COLA review when it states that it is "unlikely" that the review can be completed in accordance with the Company's requested timeline. (Tr. 1764). No one interpreted this letter to mean that the NRC would not issue an LWA at all, which was the effect of the NRC's decision. (Tr. 1764-65). If the NRC meant that it would not issue the LWA at all, it would have said so directly, rather than referencing the timeline that PEF requested. (Id.). Jacobs and the other Intervenors have the benefit of knowing what happened in January 2009, which influences their strained reading of the October 6 letter. The Company, however, had to make its decision based on the facts as they existed in December 2008. In so doing, the Company followed its risk identification and mitigation strategies, which Jacobs does not challenge as imprudent or unreasonable. (Tr. 1489-90). Jacobs' testimony is simply an example of "Monday-morning-quarterbacking" in which he has the benefit of information that was not available to the Company when the Company was required to make a decision. Under the Commission's standard for determination of prudence, such use of hindsight is not permitted.

As discussed above, the Company's decision to execute the contract in December 2008 secured a number of benefits to the Company and its customers. Further, PEF is continuing to follow prudent project management by attempting to minimize project expenditures to completion of engineering work already under way until an amendment to the EPC contract incorporating a new project schedule can be finalized (Tr. 1184; 1190).

The Intervenors' strained attempt to find a signal from the NRC in its October 6, 2008 docketing letter that the review of the LWA application would be significantly delayed due to geotechnical issues is not supported by the contemporaneous events. By docketing the COLA

with the LWA on October 6, the NRC indicated that the Company had met the heightened standard of rigorous technical review and that the COLA and the LWA applications were sufficient for NRC review. (Tr. 1760; 1930; 1937). The October 6 letter asked for additional information, which is a normal part of the licensing process, and that information was provided. (Tr. 1765). There was no indication by the NRC that the information provided was deemed inadequate. (Tr. 1765-66). All indications were that the NRC was proceeding with the review of the application.

This view was confirmed by the Company's interactions with the NRC and by contemporaneous comments by the NRC. On December 4, 2008, during a public meeting, Brian Anderson, the NRC Project Manager for the LNP and the author of the October 6, 2008 docketing letter, stated that he expected review of an LWA to take approximately two years. (Tr. 1743-44; 1769; 1945-55; 1979; 2007). If the NRC Project Manager did not know or anticipate in December 2008 that the NRC would later decide to take 42 months to review the LWA due to personnel constraints, PEF certainly could not have known.

Before January 23, 2009, the NRC never said that the geotechnical review scope would require the same duration for the LWA review as the COL review. In fact, the NRC never said on January 23, 2009, that the site complexity or geotechnical questions alone meant the LWA review would be delayed – instead, the NRC attributed the delay to the NRC's lack of resources to process the LWA sequentially rather than concurrently with the COL. (Exhibit 101, Pg. 28 of 233 (Confidential Exhibit)). This was the first time the NRC had given any indication that a lack of resources would cause a delay in processing the LWA application.

Despite OPC counsel's attempts to discount Mr. Anderson's comments as not certain, the fact is that 24 months is much closer to the approximately 30 months (PEF's requested

review schedule) than it is to 42 months (NRC's ultimate decision). (Tr. 1805). In addition, contrary to the Intervenors' questions, it is not surprising that PEF senior management was not notified of Mr. Anderson's comments in December 2008 before executing the EPC contract. As explained by witnesses Miller and Lyash, the comment was not of particular note at the time because it was consistent with what PEF understood would be the NRC's review schedule. (Tr. 1789; 2165).

Jacobs also attempts – without any support – to raise the inference that certain quality assurance issues by one of PEF's vendors, CH2MHill, may have possibly contributed to the LWA decision. (Tr. 1771). This is unsupported by the record. In short, the vendor had a deficiency in its documentation (preparing its paperwork) of work on another project in another state (the Harris Project in North Carolina). (Id.). PEF and the vendor caught the deficiency, PEF told the vendor to fix it, PEF audited the vendor to make sure the deficiency was corrected and it was fixed. (Id.). The NRC reviewed the correction and the issue was resolved. (Id.). There was no impact on the quality or the timely filing of the COLA. (Tr. 1772). There is no evidence that the quality assurance issue had any impact whatsoever on the NRC's determination regarding the LWA. If anything, the issue demonstrates PEF's commitment to carrying out its stringent project management and vendor oversight controls, because those controls actually worked to correct a problem.

c. PEF Reasonably Expected To Execute Any Joint Owner Agreements After The EPC Agreement Was Executed.

PEF was prudent in executing the EPC agreement before having joint owners signed up for the LNP. As explained by witnesses Miller and Lyash, it is not reasonable to expect joint owners to sign a joint ownership agreement and invest in a project without knowing what the

EPC agreement would look like in final form. (Tr. 1774; 2076). Even Jacobs admitted that it was not unreasonable for PEF to sign the EPC contract first and then sign joint ownership agreements. (Tr. 1492). He also admitted that PEF has no control over joint owners to make them sign a joint ownership agreement. (Id.). As explained in the need determination proceeding, the Company has been pursuing joint ownership discussions because there are benefits of sharing costs and risks through joint ownership. (Id.; 2055). There is no requirement, however, that PEF sign up joint owners for the LNP. (Tr. 2055). While PEF has been pursuing joint ownership, and continues to do so, it is not obligated to do so and certainly was not obligated to sign up joint owners before executing the EPC contract.

ii. PEF Has Demonstrated The Feasibility Of The LNP, As Required By The NCRC Rule.

Rule 25-6.0423(5)(c)5., F.A.C., requires a utility to submit "a detailed analysis of the long-term feasibility of completing the power plant." PEF has complied with this directive by providing the Commission with the information on which the Company's management relies in making its determination of a project's feasibility, an approach that is logically reasonable. The Commission should approve the Company's feasibility analysis for the LNP.[4]

It should first be noted that Rule 25-6.0423 provides an alternative cost recovery mechanism consistent with the intent of the Florida Legislature to promote investment in new nuclear generation projects. The Legislature recognized that without an alternative cost recovery mechanism as embodied in the rule, utilities would not be able to move forward with the development of new nuclear units. (Tr. 2061). The Legislature recognized the many benefits

[4] PEF believes that its feasibility analysis complies with the Rule. However, should the Commission determine that the Company's submissions are for some reason deficient, due process requires the Commission afford the Company an opportunity to correct any perceived deficiency.

from nuclear power, including fuel portfolio diversity, a reduced reliance on fossil fuels for energy production, the promotion of carbon-free energy production and providing unparalleled based load capacity with a relatively low fuel cost. The LNP and its associated benefits are consistent with meeting these legislative goals. (Tr. 2085).

The Company has provided, in the direct testimony of witness Miller, competent, substantial evidence showing the continuing feasibility of completing the Levy nuclear power plant. As Miller discusses in his direct testimony, the feasibility of completing the LNP means it is capable of being completed, i.e. that it is technically and legally feasible. There is a reasonable basis to conclude that the AP 1000 design can be successfully installed at the Levy site and that all necessary licenses and permits can be obtained. (Tr. 1777-78; 2071-72)

The Company considers a variety of factors in determining feasibility, including total project cost, along with fuel costs, load projections, environmental regulations, federal and state legislative policy, etc. (Tr. 1781; 2072; Exhibit 123). This is a qualitative analysis, involving the monitoring of all of the relevant factors. (Tr. 2072). It is not a rote quantitative cost-effective analysis as suggested by Intervenors based on year to year fluctuations in spot prices, forecasts and projections. (Id.).

The Company, in response to a Staff discovery request, prepared an updated cumulative present value revenue requirements (CPVRR) analysis that incorporate 20 month and 36 month schedule shifts. (Exhibit 129). That analysis demonstrates that the LNP is still cost effective (and slightly more cost effective than the analysis submitted in the Need Determination proceeding) even with the schedule shift to the LNP. (Tr. 2171). The Intervenors were provided this analysis in discovery but chose not to respond to it. Rather, the Intervenors ignore the analysis and offer only their speculation about the cost effectiveness of the LNP.

There is no evidence in the record showing that the LNP is not feasible. Intervenors have offered no evidence that rebuts the substance of the Company's analysis or its conclusion that the project remains feasible.

The Company does not agree with Intervenors' assertions that a CPVRR analysis, which would compare the LNP to other generation alternatives based on load, fuel, and emission cost forecast changes, should be performed every year to demonstrate project feasibility. (Tr. 2090-93). Because projections for each of the inputs can and will change from year to year, it is inappropriate to use an analysis like the CPVRR to judge the feasibility of a long-term project like the LNP. (Tr. 2063-65). Even Jacobs admitted that the Commission should not make a decision regarding the project going forward, just based on a change in the cost-effectiveness of the plant using the CPVRR analysis. (Tr. 2065).

If the Company applied changes in such forecasts to decide whether to stop or restart the project each year, the Company could never build a nuclear power plant. (Tr. 2064). Indeed, as admitted by Jacobs, the feasibility of a nuclear power plant must be reviewed over a time period of 60 years, because no utility would build a long-term nuclear plant based on a one year change in the CPVRR. (Tr. 2065).

Jacobs also points to three areas that PEF considers for a feasibility analysis (based on his interpretation of Mr. Miller's deposition): technical feasibility, regulatory feasibility and cost feasibility; he then states that there are "major questions" in each area. (Tr. 1464). These "major questions" include, respectively, the chance that the NRC will not issue a COL due to unresolved issues with the site specific design, changes in federal and state regulatory policy, and possible changes in the project cost estimate that might come out of the on-going negotiations regarding the amendment to the EPC agreement. (Tr. 1464-65).

As Mr. Miller explained in his rebuttal testimony, it is illogical to say that a project is not feasible based on the fact that necessary regulatory approval may not be received – the project remains feasible unless a permit is denied. (Tr. 1778). Additionally, federal and state policy may always be changed – that is the nature of policy. It would be impossible to plan any long-term project if it could be said to not be feasible based on the possibility of change in regulatory policy over an extended period of time. (Tr. 1779; 2073-74). While there is always a degree of uncertainty with regard to regulatory approval, PEF has no reason to believe that the NRC will not review, approve and issue a COL for the LNP. (Tr. 1778; 2073-74).

It is clear, based on the requirements of the Rule, that PEF has demonstrated the LNP is feasible; that is, it remains capable of being completed. Any assertion to the contrary is simply false. As discussed above, the Intervenors' positions do not demonstrate the project is not feasible – they simply demonstrate that there are certain risks to the completion of the project, as with any project. However, as the testimony showed, PEF has in place adequate and responsible risk mitigation procedures, and those procedures are being followed. (Tr. 1490).

The Rule does not state that the Company is required to show that it is certain that the project will be completed as scheduled, with no possibility of delay. Rather, the Commission's Rule requires the Company to show that the completion of the power plant is feasible, and the Company has made that showing.

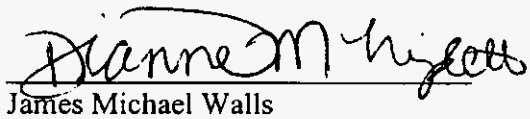
D. Conclusion

Section 366.93, the legislative authority that binds the Commission in this proceeding, requires that the Commission allow the recovery of prudent and reasonable nuclear project costs. The Commission can only disallow costs if there is no competent, substantial evidence that the

costs at issue are either reasonable or prudent. The competent, substantial evidence demonstrates that PEF's project costs are either reasonable or prudent. No party presented any contrary evidence. PEF has also demonstrated the long-term feasibility of completing both the CR3 Uprate and LNP. The Commission should therefore permit the recovery of all PEF's costs in this proceeding.

For all of the foregoing reasons, and based on the virtually undisputed evidence presented at the hearing, the Commission should grant PEF's Petition for Cost Recovery through the NCRC for its CR3 Uprate and Levy Nuclear Projects.

Respectfully submitted this 18th day of September, 2009.



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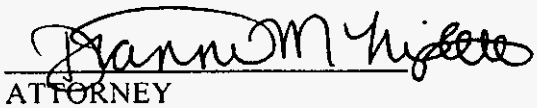
CERTIFICATE OF SERVICE

I HEREBY CERTIFY a true and correct copy of the foregoing has been furnished to counsel and parties of record as indicated below via electronic and U.S. Mail this 18th day of September, 2009.



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APPENDIX A

Issue 32A and 32B Detailed Support

Issue 32A

CR3 2010 Uprate Revenue Requirement Summary

	2006-2008 True Up	2009 A/E True Up	2010 Projected	Total
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
Revised for Deferral Update

	2006-2008 True Up	2009 A/E True Up	2010 Projected	Total
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)	53,620,827	24,001,785
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	386,964,046	462,853,652
Less: Proposed Deferral				(273,889,606)
Plus: 2010 Amortization of Proposed Deferral				36,618,113
Proposed Levy Revenue Requirements for 2010 CCRC				225,582,159

Issue 32B

CR3 2010 Uprate Revenue Requirement Summary

	2006-2008 True Up	2009 A/E True Up	2010 Projected	Total
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 Traditional NCRC Recovery Revenue Requirement Summary

	2006-2008 True Up	2009 A/E True Up	2010 Projected	Total
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