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LARRY CRETUL
Speaker of the House of Representatives

October 19, 2009

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Ms, Ann Cole, Commission Clerk
Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, Florida 32399-0850

Re: Petition for increase in rates by Progress Energy Florida; Docket No. 090079-EI

Dear Ms Cole:

Enclosed for filing on behalf of the Office of Public Counsel are the Citizen's Post-Hearing Statement of Positions and Post Hearing Brief.

If you have any questions or concerns; please do not hesitate to contact me at (850) 488-9330. Thank you for your assistance in this matter.

Sincerely,

Charlie Beck, for

Charles J. Rehwinkel
Associate Public Counsel

cc: Parties of Record

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OPC ___
RCP 1
SSC 1
SGA 1
ADM ___
CLK ___

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FPSC-COMMISSION CLERK

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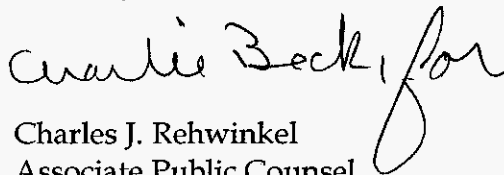

Charles J. Rehwinkel
Associate Public Counsel

cc: Parties of Record

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Petition for increase in rates by Progress Energy Florida, Inc.	DOCKET NO. 090079-EI
In re: Petition for limited proceeding to include Bartow repowering project in base rates, by Progress Energy Florida, Inc.	DOCKET NO. 090144-EI
In re: Petition for expedited approval of the deferral of pension expenses, authorization to charge storm hardening expenses to the storm damage reserve, and variance from or waiver of Rule 25-6.0143(1)(c), (d), and (f), F.A.C., by Progress Energy Florida, Inc.	DOCKET NO. 090145-EI FILED: October 19, 2009

CITIZENS' POST-HEARING STATEMENT OF POSITIONS AND POST-HEARING BRIEF

Pursuant to Order No. PSC-09-0638-PHO-EI, the Citizens of the State of Florida, by and through the Office of Public Counsel("OPC"), hereby submit their Post-Hearing Statement of Positions and Post-Hearing Brief. Numerous issues were either stipulated by the Parties prior to the hearing, dropped from the proceeding, or no position was taken by Citizens. As such, these issues will not be addressed in Citizens' Post Hearing Brief.

PRELIMINARY STATEMENT

The OPC has challenged PEF's half billion dollar rate increase filing on several bases. First, and foremost, the record establishes that the company's case is filed without regard to the dire nature of the economic conditions that persist in the Florida

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territory that they serve. Second, the company made no effort to insure that the financial presentation in its test years represented going forward operations of the company. This was manifest in the overwhelming evidence that the company's projected O&M expenses appear to be significantly higher than the historical levels. Third, a significant aspect of the company's filing sought to ignore the over accrued depreciation reserve and heap an additional unjustified and unsubstantiated $100 million of depreciation expense increase onto the rate increase request. Fourth, the company's requested return on equity ("ROE") or shareholder profit level surpasses all similar requests in 2009 and is plainly excessive. Most distressing is the fact that the company is seeking increased rates based in significant degree on raises, bonuses and incentive compensation payments that would be a concern even in times where that type of pay was available to the labor market at large. On top of all this, PEF has built its case on a concerted effort designed around convincing the Commission to ignore the fundamentals of cost-based ratemaking by focusing excessively on "cash flow" and what Wall Street thinks.

All of these factors and the company's case highlight the combination of insensitivity and cynicism with which PEF seeks to extract a half billion dollars from its customers. Striking in the company's case was an effort to deflect the straightforward well-grounded ratemaking adjustments supported by the Intervenor's experts by attacking their credentials.

The fundamental drivers of this case fall into three broad categories:

Shareholder profit – PEF seeks an increase from the current 11.75% ROE to 12.54% or an increase in revenue requirements of $41 million. In contrast, OPC has proposed an ROE of 9.75%. The difference between the two recommended ROE numbers is $144 million in revenue requirements. Evidence at the hearing indicated that the average ROE award in 2009 nationally was about 10.51%. Ex. 264.The difference between that and the company's request is about $105 million in revenue requirements. On top of that, PEF seeks to include and earn that excessive profit on over $700 million in phantom equity based on secret evidence that they did not let the Commission see. The revenue requirement associated with this completely artificial "cost" is $24.7 million. TR 4175. Together the ROE and phantom equity make up $168 million of the difference between the customer and PEF positions.

Depreciation – PEF is seeking an increase in depreciation expense of $97 million over existing expense levels while seeking to hold onto the (at least) $646 million of excess depreciation reserve generated by depreciation rates that have historically been too high. The case has highlighted a startling lack of justification for the depreciation study that masks a significant amount of the company's "ask" in this case. A major component of the OPC's opposition to the untimely request is the complete lack of required documentation for a huge chunk of what the company expects ratepayers to pay. PEF simply failed to follow the Commission's rule as it applies to the mandatory documentation for receiving depreciation expense recovery. The OPC demonstrates that a close look at certain of the depreciation expenses strongly supports a reduction of $113 million in the expense level proposed by PEF. In addition, while identifying a depreciation reserve excess of at least $858 million, the OPC has proposed that only the undisputed amount of $646 million should be returned to the ratepayers over a four year

rate setting period by applying a credit of $161 million over a 4 years period. Together these regulatory adjustments amount to a $274 million difference from the PEF request. Under the circumstances that the company is seeking a $500 million dollar rate increase in dire times, the Commission should avail itself of the opportunity to evaluate whether the company has met its burden, both in what it filed, as well as how well it explained and justified.

O & M Expense – A central aspect of this case involves the appropriateness of the increase in projected 2010 expenses above historical levels of PEF's O&M expenses. The essential difficulty that the OPC had in this aspect of the case was the lack of substantive justification of the overall level of expense increase as well as the company's explanation as to the representative nature of the expense over the time in which rates will be in effect. In addition to this pronounced problem, PEF also proposed to ask economically suffering ratepayers to fund above-the norm pay raises, and incentive compensation that is little more than added compensation. On top of all this, PEF – against the rigid truthfulness backdrop of the Sarbanes – Oxley Act – represented to investors and Wall Street that they would achieve **annual, sustainable productivity gains** in O&M expenses in statements made immediately ***PRIOR TO*** filing the rate case, but did so without reflecting the gains in the MFRs in support of proposed rates. TR2558-2560; Ex. 293. In all, the unsubstantiated spikes in O&M expense coupled with the unconscionable request to force customers to fund increases to compensation, yield the balance of the difference between the OPC and the Company.

OPC'S STATEMENT OF BASIC POSITION

OPC's basic position is that PEF has grossly overstated its need for any rate increase. Its request for a half billion increase in retail base rates comes at a time when the state of Florida is mired in the worst economic slump in over 50 years. This case is driven by three main issues. First, the Company is seeking an outlandish ROE of 12.54% at a time when ROE awards around the country are almost 200 basis points lower. The OPC has filed expert testimony demonstrating that an ROE of 9.75% is more appropriate. The overstatement of its cost of capital requirement inflates revenue requirements by over $140 million. Second, PEF has in the past over collected depreciation expense resulting in over $850 million in depreciation reserve surplus. Furthermore, the Company has improperly calculated its proposed depreciation expense by at least $113 million. Together these errors inflate the revenue requirement by $275 million. Finally, PEF is seeking excessive compensation of nearly $60 million. All told, these three issues drive the company's "need" to seek rate relief in these unfortunate times. The commission should reject the Company's positions on these issues and reject the requested rate relief.

- **A note on the record – Withdrawn Rebuttal of Peter Toomey**

Minutes before what became the conclusion of the hearing, PEF announced withdrawal of, and thus did not offer it for admittance into evidence or subject it to cross examination, the pre-filed rebuttal testimony of witness Peter Toomey. To the extent this was the company's prerogative and the hearing immediately concluded thereupon, all written and spoken references to what it might have offered in the form of

evidence in testimony are a nullity. The same goes for any document previously entered into the record which references any information not otherwise contained solely in the sworn and admitted testimony of another PEF witness which was subject to cross examination at hearing. This includes any portions of discovery that references the Toomey rebuttal testimony specifically and was offered by staff in contemplation of being in lieu of cross examination. The OPC stipulated to all staff proposed discovery exhibits as an accommodation for administrative efficiency, reasonably contemplating that the witnesses (including the PEF witness assigned to the largest number of issues) would be subject to cross examination unless stipulated. The withdrawal of testimony was not a scenario contemplated in the OPC's accommodating stipulation. By withdrawing the testimony the company has effectively withdrawn or mooted all evidence that is directly related to its submittal. Any evidence related to rebuttal that is not subject to cross examination through Mr. Toomey, is at a minimum hearsay and does not meet the standard of Section 120.57(1) (b), Fla. Stat., and is not competent substantial evidence that the commission can rely on for any of its decision making. Specifically, OPC objects to any reference to evidence or reliance in the decision making of the Commission that is based on the withdrawn document entitled Prefiled Rebuttal Testimony of Peter Toomey and all related exhibits and testimony references to that testimony.

ISSUES

INTRODUCTION TO DEPRECIATION ISSUES (ISSUES 8-15):

OPC's adjustments to the depreciation expenses requested by the company in this docket amount to a total expense reduction of $275 million annually, based on plant in service as of December 31, 2009. Approximately $161 million of this annual amount is proposed in order to return to current customers a portion of a very large reserve excess that is the result of PEF's having over collected depreciation expense over time. The balance ($113,112,961 million) relates to adjustments to PEF's proposed depreciation expense that should be recognized on a going forward basis. TR 2013.

Contrary to the express requirements of Rule 25-6.0436, F.A.C. ("Depreciation Rule"), PEF did not provide the mandatory, required specific substantiating factors information necessary to support to justify EACH of the categories of depreciable plant. The Commission's rule clearly and unequivocally states in relevant part that:

> (6) A depreciation study shall include:
>
> ***
>
> (f) An explanation and justification for each study category of depreciable plant defining the specific factors that justify the life and salvage components and rates being proposed. Each explanation and justification shall include substantiating factors utilized by the utility in the design of depreciation rates for the specific category, e.g., company planning, growth, technology, physical conditions, trends. The explanation and justification shall discuss any proposed transfers of reserve between categories or accounts intended to correct deficient or surplus reserve balances. It should also state any statistical or mathematical methods of analysis or calculation used in design of the category rate.

Emphasis added.

The Depreciation Rule is also clear and unambiguous that the depreciation study must be filed by the time of the filing of the MFRs in order to receive any treatment of the new depreciation rates in revenue recovery:

> (8)(a) Each company shall file a study for each category of depreciable property for Commission review at least once every four years from the submission date of the previous study unless otherwise required by the Commission.
>
> ***
>
> (c) A utility proposing an effective date coinciding with the expected date of additional revenues initiated through a rate case proceeding shall submit its depreciation study no later than the filing date of its Minimum Filing Requirements.

Emphasis added.

The company has failed to carry its burden of proof and violated Commission rules in the development and presentation of the 2008 depreciation study that is the basis of the increased depreciation rates requested in this docket. The Commission should reject the company's study based on its failure to follow FPSC rules by which are necessary to adequately and timely support PEF's proposed rates. TR 1138-1139; 1141; 1143-1144; 1145; 2069-2071. For this failure alone, the Commission should accept the recommendations of OPC witness POUS relating to all depreciation issues.

With respect to the filing, PEF Depreciation witness Robinson acknowledged that the company did not file the documentation required by the rule. Even the scant information that was belatedly provided well after the MFRs were filed, was admittedly were conceded to not be compliant with the rule. Instead the company submitted much later on what amounted to conclusory statements with not true explanation such as a piece of paper that merely listed the service lives for generating units including the coal units. The utter lack of substantiation was confirmed on cross examination of PEF witnesses Robinson and Crisp. TR 986;1138-1145;3417-3451. Mr. Pous also confirmed this startling failure under cross examination by Staff. TR 2179-2181. Even the Company's dismantlement witness Kopp, opined that the kind of information that was lacking in the filing was important for understanding the fundamental of the company studies in that areas. TR 3697-3700. He gave a good accounting that details and assumptions are needed – not just numbers on a piece of paper.

The Commission should follow its long-standing policy of dealing with material imbalances between the theoretical and actual reserves as soon as possible, so long as they do not adversely affect the financial integrity of the company. The Commission should accept OPC's recommendation of amortizing the $645,805,342 million of surplus depreciation reserves as a credit to customers' benefit in the ratemaking calculation to be distributed over a 4 year period. TR 2046. Such action would eliminate much, but not all, of the surplus reserves that have been accumulated by the company while simultaneously providing a significant increase to the company's

achieved return on equity due to the elimination of $161,456,336 million expense each year for a four year period until January 1, 2014. TR 2048.

The question was posed, almost rhetorically at hearing: Why should this Commission give more credence to the proposals of Public Counsel over the depreciation study that the company performed? The answer is found in OPC witness Pous' own words in response to that question form a Commissioner:

> "I defy anybody to go to the company's depreciation study and find the basis for their proposals. It is not in there. It's not in his [PEF witness Robinson] work papers. It's not in responses to data requests. I (OPC witness Pous) have a data response that says it's not an arithmetic process. It's an interpretive process. They didn't provide any other basis, narrative, explanations. I set forth parameters, gave you information, cited documents. I defy you again to go back to the company's study and find any of that information. We have generalized statements at best. They're vague at best. There's no documentation. And the company truly has the burden of proof in the process." TR 2193-2194.

The company has failed to carry its burden of proof and violated Commission rules in the development and presentation of the 2008 depreciation study that is the basis of the increased depreciation rates requested in this docket. The Commission should reject the company's study based on its failure to follow prescribed FPSC rules. The Commission should accept the recommendations of OPC witness POUS relating to all depreciation issues.

The Commission should follow its long-standing policy of dealing with material imbalances between the theoretical and actual reserves as soon as possible, so long as they do not adversely affect the financial integrity of the company. The Commission

should accept OPC's recommendation of amortizing $646 million of surplus depreciation reserves as a credit to customers to be distributed over a 4 year period. Such action would eliminate much, but not all, of the surplus reserves that have been accumulated by the company while simultaneously providing a significant increase to the company's return on equity due to the elimination of $161 million of expense each year for a four year period until January 1, 2014.

ISSUE 8: What are the appropriate capital recovery schedules?

POSITION: *The appropriate recovery schedules should be revised consistent with recommendations of OPC witness Jacob Pous. This issue should be a "fallout issue" that takes into account the Commission's consideration of, and explicit rulings on the specific depreciation-related issues.*

ISSUE 9: Is PEF's calculation of the average remaining life appropriate?

POSITION: *Yes. However, the OPC does not agree with the assumptions and inputs used; the methodology and the math appear to be correct. *

ARGUMENT

The OPC assumes that this is not a substantive issue since it appears to only address the mathematical calculations related to the average remaining life calculation the PEF's proposed rates. The OPC has acknowledged that the math is correct.

ISSUE 10: What life spans should be used for PEF's coal plants?

POSITION: *PEF's proposed life spans of 53.5 and 50.5 years, respectively, for the Crystal River 4 and 5 coal-fired generating units are artificially short. Based on empirical evidence and the treatment afforded such units in other jurisdictions, as well as indications of PEF's expectations, a 60-year life span is appropriate for coal-fired units*

ARGUMENT

The Company proposes unreasonably short life spans (the time frame between when a unit goes into service and when it ultimately retires) for many of its steam generating units. In doing so, PEF has utterly failed to meet its burden of justifying the life spans for the CR 4 & 5 coal plants. TR 2052-2053.

Under its own the rule, the Commission should give no presumptive weight to the PEF proposals. In fact, since the company failed to file a compliant study, under section (8)(c) of the Depreciation Rule, the company should not be entitled to any revenue requirement relief based on any increased depreciation expense that is based on the mandatory portions of the study that were NOT filed on March 20, 2009.

Mr. Pous testified that the Company underestimated the reasonable life expectancy of its investment in combined cycle generation. To begin to correct this situation, he supported increasing the life spans for the Crystal River 4 and 5 coal-fired units from the low 50-year range as proposed by the Company to 60 years, which is a life span now being recognized by other regulators and utilities. OPC witness Pous provided a reasoned and supported recommendation of the service lives based on similar considerations in other states. Under the circumstances of this large increase, the lack of rule compliance and the failure to provide any Rule compliant or post MFR-

filing justification in the record (TR 1138-1139;1141;1143-1144;1145; 3417-3451), the 60 year life recommended by Mr. Pous (TR 2058) is not unreasonable and in effect constitutes the only competent evidence the Commission should rely upon. This approach would also be consistent with PEF witness Robinson's testimony that where the commission lacks sufficient evidence in the pending matter, it can and should look to other jurisdictions. TR 1160.

ISSUE 11: What life spans should be used for PEF's combined cycle plants?

POSITION: The 30-year life span that PEF uses for combined cycle units is unrealistically short. The Commission should direct PEF to evaluate available information and develop a more appropriate life span in its next depreciation study. If the Commission decides to revise the life span for combined cycle units in this proceeding, it should set the minimum value at 35 years per the testimony of Witness Marz.

ARGUMNET

As Mr. Pous testified, PEF's proposal for an approximate 30-year life span for combined cycle generating units is also understated. He noted that other utilities and regulators are recommending longer life spans for combined cycle generating facilities. In addition, PEF witness Sorrick, claimed that part of the increase in O & M in the power operations area was to preserve and extend the company's investment in the newly in place CC units. TR 449-450. In addition, PEF's justification for the life spans does not meet the Commission's requirements under its Depreciation Rule as discussed *supra*. For these reasons, the Commission should adopt the testimony of witness Marz and increase the life span to 35 years as an initial step in this case. TR 2058. It is no

longer reasonable to expect customers to overpay for decades for the use of generating facilities that realistically should and can be expected to last longer than the Company's unsubstantiated 30-year life expectations. In addition, as proposed by Mr. Pous, the Commission should further order the Company to perform a detailed analysis demonstrating why its substantial investment in combined cycle generating facilities cannot be expected to reasonably operate for 35 years or longer, and present the study in its next depreciation filing. TR 2058.

ISSUE 12: What are the appropriate depreciation parameters (remaining life, net salvage percent, and reserve percent), amortizations, and resulting rates for each production unit, including but not limited to coal, steam, combined cycle, etc.?

POSITION: *The appropriate depreciation parameters should be determined using the life spans, remaining life calculations, the level of interim retirements, net salvage and resulting depreciation rates as shown in Exhibit No. 133 (JP-1), Exhibit No. 136 (JP-4) and Exhibit No. 137 (JP-5) as addressed as proposed by OPC witness Pous in the sub-categories below:

Production Units	Life Span
Coal-fired production units:	60 years
Large steam oil or gas-fired generating facilities (Anclote 1 & 2):	50 years
Combined cycle generating facilities:	35 years*

ISSUE 13: What are the appropriate depreciation parameters (remaining life, net salvage percent, and reserve percent), amortizations, and resulting rates for each transmission, distribution, and general plant account?

POSITION: *The Commission should adopt the depreciation rates as recommended by OPC witness Pous as outlined specifically in his testimony as contained in Exhibit 133 (JP-1). The net salvage results proposed by the company are unrealistic and undocumented. The Commission should accept witness Pous' recommendations regarding net salvage as shown on Exhibit 142 (JP-10)*.

ISSUE 14: Based on the application of the depreciation parameters that the Commission has deemed appropriate to PEF's data, and a comparison of the calculated theoretical reserves to the book reserves, what are the resulting differences?

POSITION: *PEF currently has a depreciation reserve excess of $858 million. This amount is based on acceptance of OPC witness Jacob Pous' adjustments to PEF's depreciation study. It does not take into account OPC's and Mr. Pous' position that the life spans that PEF assigns to combined cycle units are too short; modifying those values to more realistic life spans in this proceeding would increase the size of PEF's depreciation reserve excess.*

ARGUMENT

PEF has a depreciation reserve excess of $858 million based on acceptance of OPC witness Pous' adjustments to PEF's depreciation study. This dollar amount does not take into account OPC's position that the life spans that PEF assigns to combined cycle units are too short; modifying those values to more realistic life spans in this proceeding would increase the size of PEF's depreciation reserve excess. The PEF study indicates based on acceptance of the company's proposed depreciation rates that the reserve excess amounts to $646 million. The reasons for the difference is that to the extent the Company depreciation rates include shorter future lives and/or less net salvage for its existing plant investments than actual, then the company will be collecting more depreciation expense than is necessary and a reserve surplus is created. The opposite is true if depreciation rates are adopted that assume longer than actual service lives. OPC believes that PEF's proposed future depreciation rates assume shorter lives for its capital assets than the facts would dictate, and accordingly, the company is actually underestimating the amount of the reserve surplus that will exist going into the future, even if the Commission accepts OPC's $646 million amortization.

The issue then, is not whether the surplus exists, but what to do with it. PEF's testimony suggesting recovery through remaining life rates flies in the face of previous FPSC orders that, in the past, have been clearly directed toward the elimination of reserve imbalances. Exhibit 286 details 31 specific orders where the Commission has imposed something other than remaining life to cure significant reserve imbalances. Admittedly, many, but not all, of these examples relate to reserve deficiencies that the Commission choose to eliminate via the booking of additional amounts to depreciation reserves. In the late 1990's, both FPL and PEF were the beneficiaries of those decisions when they were allowed to book overearnings into the depreciation reserves, rather than to face the possibility of refunds to customers. The depreciation flexibility incorporated into the 2002 settlements of both the FPL and PEF rate cases allowed the companies to reverse that process, once again by a process other than remaining life. The Commission's policy of first rebalancing the reserves of companies on an account by account basis to better align the theoretical reserves with the actual reserves also provides a bright line for the Commission to follow in the future -- the goal is to satisfy the return of capital consistent with its consumption, which means we should always seek to minimize differences between actual and theoretical reserves. PEF's testimony in this regard is clearly self-serving. PEF wants to keep the money if it is a surplus and get more money if it is a deficiency. The orders of this Commission listed in Exhibit 286 demonstrate that reserve imbalances should be eliminated as soon as possible, whether they be deficiencies or surpluses.

Finally, what is the impact on PEF and its customers should the Commission accept OPC's four year amortization proposal?

CUSTOMERS

Basically, PEF has imposed an involuntary loan from its customers for by accumulating a **<u>$646 million</u>** depreciation surplus that is not needed in order to recover the company's capital assets through the implementation of fair and reasonable remaining life rates. Absent an affirmative vote from customers, the company should return its surplus as soon as possible. Without asking customers, OPC would suggest that customers would want the money back now, rather than later, especially in these most difficult economic times. Without asking the existing customer base, OPC would suggest that existing customers. Prior customers have already loaned the company $646 million extra that future customers will not have to pay should the Commission accept PEFs incorrect and rigid remaining life logic. The Commission's difficult task in this issue is to choose between different generations of customers. The logical choice would be to cure the inequity today, but that choice might not be possible in order to follow the Commission's second goal of curing reserve imbalances without adversely impacting the financial health of the company.

THE COMPANY:

The Commission's stated goal is to cure reserve imbalances as soon as possible without negatively impacting a company's fair and reasonable return on its investment. In the face of overearnings in past years, depreciation reserve deficiencies have been targeted by the Commission in order to book additional depreciation expense dollars

that would result in lower reported earnings for the companies—thereby bringing the reported earnings in line with the allowed rate of return. Another alternative in each of these cases would have been to order a direct refund to customers. Any suggestion by the company that a theoretical reserve deficiency or surplus is not real money should be rejected outright by the Commission. PEF's smokescreen of presenting multiple witnesses to cloud the issue by testifying that the theoretical reserve is not real. Likewise, claims about GAAP applicability to this Commission's absolute and complete authority to set and keep records for the depreciation accounts of electric utilities is a red herring and a diversion. This claim stands above all others made by PEF as – to put in legal terms -- hogwash, (See, Section 366. 01, Fla. Stat.) PEF is well aware that the Commission requires the theoretical reserve calculation in every depreciation study for a specific purpose. They are also well aware that Commission has absolute authority over the establishment of depreciation rates and depreciation expense and reserves.

Since depreciation studies are conducted approximately every four years, they generally do not coincide with rate cases. For that reason, recovery of reserve deficiencies or surpluses through rates in the past have been difficult since general rate changes are only allowed through the process of a full rate case. That problem does not exist in the current docket, since the Commission has total authority to impose rate reductions for customers to cure the problem of surplus depreciation reserves, or to impose additional surcharges for future storms or to impose higher rates to compensate the company for future costs in the test year that it did not incur in the base year. The

Commission should bear in mind, however, its legislative mandate to impose rates that provide a fair and reasonable return to investors. PEF's argues that the four year amortization of $464 million in reserve surplus would harm the company's financial rating. It is kind to say that the company overstates its case regarding the adverse impact of the amortization, for several reasons:

1. The booking of a $161 million annual credit to depreciation expense will serve to reduce expense and increase earnings. Based on the established fact that in this docket 100 basis points on ROE equals $52 million of revenue requirements (TR 1703), it follows the company's reported achieved ROE over the next four years would rise from around 9%, where it is now, to over 12% if the Commission imposes OPC's amortization proposal, all other things being equal.

2. On the negative side of the ledger, rate base would change, as it always does, during the next four years and at the end of the day PEF would have a regulated rate base that is $646 million higher than it would otherwise have been. Even so, PEF witness Vilbert testified that this increase in ratebase is no different that the situation that would exist if depreciation rates had been set correctly in the first place. TR 3966.

3. PEF complains that its cost of capital would rise if the company sets a lower rate of return than PEF wants in this case, or if the Commission accepts OPC's amortization proposal. If depreciation expense is reduced, Return on Equity will rise. So the negative impact of reduced cash flow because of lower depreciation rates could

possibly be offset by increased profit. Since the rating agencies have not divulged to the Commission or anyone else the formulas they use to establish ratings, then the Commission cannot reasonably make a judgment as to the merit of PEF's claims of financial harm, whatever it might be. On that basis alone, the Commission should accept the testimony of OPC witness Lawton who sees no financial harm to the company's ability to raise capital.

4. PEF portrays the OPC's proposal in such dire terms that we would be remiss to fail to remind the Commission that the goal of aligning the actual and theoretical depreciation reserves for future ratemaking purposes is not a one-time opportunity. The Commission, the Company and OPC will have another opportunity in 2012, 2016, 2020, 2024 and 2028 in order to achieve the ultimate goal—return of the company's existing capital assets over their remaining 22 year life. No more. No less.

ISSUE 15: What, if any, corrective reserve measures should be taken with respect to the differences identified in the Issue 14?

POSITION: *PEF's enormous depreciation reserve excess means it has over-collected depreciation expense from current customers in a way that constitutes a massive intergenerational inequity. PEF should be required to amortize $$646 million of its reserve excess back to customers over a period of four years.*

ARGUMENT

PEF's enormous depreciation reserve excess means it has over-collected depreciation expense from current customers in a way that constitutes a massive

intergenerational inequity. The current intergenerational inequity that exists due to the current excess of the depreciation reserve created by prior accelerated levels of depreciation cannot reasonably be addressed or rectified by relying on a 21 year remaining life period. TR 2045.

Neither OPC nor PEF contest the fact that based on the best information available today, as of this point in time, that the depreciation reserve is excessive by at least $646 million. TR 2043.

Neither OPC nor PEF contest the fact that the reserve surplus should serve to reduce PEF's future depreciation expenses in the future by $646 million. TR 2043. OPC and PEF's disagreement revolves solely around the appropriate length of time in which to calculate the recovery of the surplus. TR 2042; 2228.

OPC points to the longstanding Commission policy: Reserve imbalances "should be recovered as fast as possible, unless such recovery prevents the Company from earning a fair and reasonable return on its investments." (See Order No. PSC-93-1839-FOF-EI) (TR 2039) and OPC, therefore, recommends a recovery period of four years to minimize the adverse impact of intergenerational inequity that is caused when the consumption of capital through depreciation is inconsistent with the recovery of capital through rates. Witness Pous references six previous Florida cases, Dockets No. 889953, No. 010669, No. 869868, No. 840049, No. 890203 and No. 970410, as examples of this Commission's historically flexible approach to depreciation reserve

variations.TR 2039. Witness Pous cited 31 specific FPSC orders where the Commission ordered recovery of reserve imbalances through something other than the remaining life concept that is proposed by the company in this docket. TR 2204; Ex.286.

PEF witness Garrett, who had never provided any testimony about depreciation before (TR 3760) and appeared to be fairly unfamiliar with the orders he testified about and even appeared to have a team of lawyers write portions of his testimony (TR 3762) magically achieved expert status and offered his opinion that the elimination of the reserve surplus by a $161 million credit to the depreciation reserve over less than the remaining life of the assets would violate prior Commission policy, would be contrary to regulatory ratemaking principles and would be contrary to accepted utility accounting standards (GAAP). TR 3728. His testimony on the application of GAAP to Commission depreciation and ratemaking policy was novel to say the least, unclear, unsupported by any corroboration, muddled with allusion to some unstated materiality overlay and in conflict with another PEF witness (Vilbert) on the same matter. TR 38..-3827:3951-3952. Just to detract more from his credibility, Mr. Vilbert admitted that he had not done a thorough review of non-Florida depreciation orders and also had never testified on depreciation, and looked at something called Miller GAAP Guide (2004) to generate an opinion about GAAP applicability to the issue even though the standard supposedly being applied was adopted in 2005. TR 3948; 3950. Witness Garrett, however, conceded in his cross examination that he had not studied all of the prior Commission depreciation orders (TR 3763) and he confirmed that the company had

booked a $250 million credit to depreciation between 2002 and 2006 as a result of the stipulation of the 2002 docket that was approved by the Commission. TR 3790. If one believes witnesses Vilbert and Garrett's testimony, the exact same adjustment proposed by OPC in the current docket was willingly entered into by the Company in 2002, was supposedly in violation of GAAP and FPSC policy and it was knowingly approved by the Commission. PEF's witnesses are clearly confused and the Commission cannot place any faith in the red herring opinions they offer.

Further review of the 31 orders cited by Mr. Pous reveals the following FPSC statements:

- **Order No. 12356**—Each company (FPC and FPL) has incurred a revenue deficiency (in the funding of the decommissioning reserve) that are to be specifically approved in conjunction with the August, 1983 fuel hearing.
- **Order No. 12290**—"We are ordering two amortization schedules for recovering the reserve deficit" ($123 million—5 yrs).
- **Order No. 12268**—Same language as above. ($21 thousand—5 yrs).
- **Order No. 12857**—Same language as above. ($32 million—5 yrs).
- **Order No. 12654**—Same language as above. ($9 million—5 yrs).
- **Order No. 12864**—"Because we have determined that new depreciation rates are appropriate, we must also provide for the recovery of the difference between the current reserve levels and what the reserve levels should be using the new depreciation rates. By allowing the company to separately amortize the reserve surplus, we are bringing the booked reserves for the accounts up to the theoretical reserve. " ($3.7 million—5 yrs).
- **Order No. 13495**—Same Language as above ($43 thousand—5 yrs).
- **Order No. 13528**—Same language as above ($3 thousand—5 yrs).

- **Order No. 13538**—Same language as above ($239 thousand—5 yrs).

- **Order No. 13918**—Same language as above, in addition to the following: "We believe it should be written off as quickly as possible." ($529 thousand—1 yr).

- **Order No. 14929**—"We believe that it is in the interest of both Gentel's customers and its stockholders that the Company's $32,138,000 deficit be written off in as short a time as practical." ($32 million—5 yrs).

- **Order No. 16963**—Reduction of deficiency amortization to $6.9 million for 7 years.

- **Order No. 18029**—Commission ordered two recovery schedules for $156 M and
- $75 M.

- **Order No. 18642**—Commission ordered 14 yr. reserve imbalance recovery schedule to be reduced to two years.

- **Order No. 18736**—"We will approve a one time charge to depreciation of $2,264,000 of unamortized investment remaining on the reserve imbalance."

- **Order No. 20330**—"The additional depreciation expense and the reserve adjustment transfer ordered above will result in a write-off in 1988 of the entire preliminary outside plant cable reserve deficiency." ($16 million—1 yr).

- **Order No. 22115**—"Our staff continues to recommend that this $47,834 be applied to the prospective reserve deficit which will correct that overstatement of rate base in seven years rather than the 19 years remaining under the present amortization pattern. (So ordered)

- **Order No. 22585**—"The remaining schedules relate to correcting reserve deficiencies associated with inadequate past recovery; therefore, in our opinion, the associated write-off should be as fast as practicable."

- **Order No. 23922**—"This methodology most closely matches the timing of expenses to life." ($99 thousand—1 year)

- **Order No. 24004**—"This imbalance…should be written off as fast as practicable." ($244 thousand—2 yrs).

- **Order No. 24005**—ORDERED that corrective reserve transfers be implemented and the net reserve imbalance of $112,430 be written off over a three year period."

- **Order No. 25679**—"Using $410,091 of these funds, along with the transfer from accounts showing a surplus will bring all accounts into balance with the reserve position attained if the life and salvage components presently seen as correct had been in use historically."

- **Order No. 931554**—"Thus, there should be sufficient earnings in 1993 to write-off the $247,758 in depreciation net reserve deficiencies."

- **Order No. 941199**—"Because a book reserve in excess of 100% still results without further corrective action, we find that this surplus shall be reallocated to help offset the remaining unrecovered costs associated with asbestos abatement projects."

- **Order No. 950475**—"TECO proposes a one year recovery schedule…to correct the calculated reserve deficiency…This will bring the account reserve more nearly in line with its calculated theoretical level."

- **Order No. 960461**—"FPL shall apply additional 1995 depreciation expense of approximately $126 million to the reserve deficiency in nuclear production. Commencing in 1996 FPL shall record an annual $30 million in nuclear amortization."

- **Order No. 970410**—"We believe this plan is appropriate because it mitigates past deficiencies with Commission prescribed depreciation, dismantlement, and nuclear decommissioning accruals." ($30 Million—2 yrs)

- **Order No. 971660**—"In Docket No. 950359-EI, FPL was authorized to record additional depreciation expenses of $175.3 million for Nuclear Production and $60.8 million for Other Production to correct reserve deficiencies. The theoretical reserve calculations…are acceptable. These allocations are approved."

- **Order No. 000293**—"By Order No. 980027…FPL was authorized to record additional expense amounts to correct the calculated historical deficiency brought about by failure in the past to adequately provide for the cost of dismantlement. FPL has increased its dismantlement reserve by $37,515,232."

- **Order No. 020501**—"The major elements contained in the Stipulation are as follows: Discretionary ability to reduce depreciation expense by up to $125 million annually." So ordered.

Ex. 286.

A fair and complete reading of the referenced Commission orders would lead to the inescapable conclusion that the Commission's long term goal has always been to align the actual and theoretical reserve positions for all accounts and that the Commission has consistently resorted to other than remaining life recovery to cure reserve imbalances.

PEF wants the Commission to eliminate the surplus over the approximate 21 year future life of the company's existing capital assets. TR 2041. PEF wants the Commission to ignore the fact that past and current customers have paid more than their fair share of depreciation expenses booked by the company and that future customers will therefore pay less than their fair share as long as the surplus exists. This is a fact. The validity of this fact is clearly demonstrated by the existence of the reserve surplus itself, based on the company's own study. If this fact were not valid, then there would be no reserve surplus.

In addition, the Commission should be mindful of the fact that PEF wants to hold onto the excess depreciation surplus that has been collected from past and current customers, while it simultaneously asks for accelerated contributions from current customers in the form of increased storm reserves in this docket, and instantaneous contributions from current customers for nuclear expansion in the fuel docket and it also wants instantaneous capital recovery of investments it may possibly make in the future that is outside the test year.

The magnitude of the intergenerational inequity compels an immediate and sizeable departure from the remaining life approach to mitigate the degree of unfairness that otherwise could be imposed on current customers. TR 2041. A decision in this docket that is fair and reasonable to all customers, past, present and future, would be to eliminate the material intergenerational inequity in the future as soon as possible. The Commission can do nothing about past customers, because that is water over the dam.

PEF should be required to take the following actions to minimize the adverse impacts of the intergenerational inequity caused by the company's historical excessive depreciation rates:

1. The company should be required to rebalance its reserves in order to align the theoretical reserve with the actual reserve amount for each account based on the remaining life rates ordered by the Commission;

2. The company should be required to book the excess depreciation reserves identified through the rebalancing process to a separate, unallocated, depreciation account.

3. The Commission should require the company to amortize $646 million of the unallocated excess reserve to customers of record over a 4 year period in order to eliminate the intergeneration inequity as soon as possible based on a year end

credit to customers of record and based on the percentage of base revenues (non-fuel) to total revenues for each class of service;

4. The Commission should require the company, as part of its annual report for the next four years, to recalculate annually the theoretical reserve in comparison to the actual reserve based on the depreciation rates authorized in this proceeding, and require the company to reallocate its reserves to achieve equality between booked and theoretical reserve levels on a yearly basis, while booking any reserve surpluses to the unallocated excess reserve account based on Commission approval.

ISSUE 17: Should the current-approved annual dismantlement provision be revised?

POSITION: *The Commission should direct PEF to propose a more realistic approach and cost level to terminal net salvage in its next depreciation study.*

ISSUE 19: What is the appropriate annual provision for dismantlement?

POSITION: *If the Commission decides to address fossil dismantlement in this proceeding, the Company's costs should be reduced by 60%.*

ISSUE 20: Are PEF's assumptions in the fossil dismantlement study with regard to site restoration reasonable?

POSITION: *No.*

ISSUE 24: Has the company removed all non-utility activities from rate base?

POSITION: *No. Ratebase and associated accumulated depreciation should be reduced to account for the erroneous wholesale direct allocation to the City of Tallahassee's ownership in CR3. *

ARGUMNENT

Refer to Issue 85 for a discussion on the erroneous wholesale direct allocation to the City of Tallahassee's ownership of CR3 as presented by OPC Witness Dismukes.

ISSUE 27: Is PEF's requested level of Plant in Service for the projected 2010 test year appropriate?

POSITION: * No. Plant in service should be adjusted ($2,312,287) to properly allocate general plant to wholesale operations. See Issue 24. *

ARGUMENT

Refer to Issue 85 for a discussion on the erroneous wholesale direct allocation to the City of Tallahassee's ownership of CR3 as presented by OPC Witness Dismukes.

ISSUE 28: What adjustments, if any, should be made to accumulated depreciation to reflect revised depreciation rates, capital recovery schedules, and amortization schedules resulting from PEF's depreciation study?

POSITION: *Accumulated depreciation should be reduced ($112,883,411) to account for the net impact of the amortization of the depreciation reserve surplus reserve recommended by OPC witness Jacob Pous and the impact of the wholesale allocation adjustment proposed by OPC witness Kimberly Dismukes.*

ISSUE 29: Is PEF's requested level of Accumulated Depreciation and Amortization in the amount of $4,437,117,000 for the 2010 projected test year appropriate?

POSITION: * No. *

ARGUMENT

With respect to OPC witness Dismukes' testimony regarding CR3, refer to the discussion of Issue 85.

ISSUE 31: Is PEF's requested level of Plant Held for Future Use in the amount of $25,723,000 for the projected 2010 test year appropriate?

POSITION: *No.*

ISSUE 32: Is PEF's requested level of Nuclear Fuel – No AFUDC (net) in the amount of $126,566,000 for the projected 2010 test year appropriate?

POSITION: *No. PEF's proposed nuclear fuel balance should be reduced ($26,752,411) as a result of the company's failure to provide any justification for the large increase in test year nuclear fuel.*

ISSUE 33: Should an adjustment be made to PEF's requested storm damage reserve, annual accrual of $14.9 million, and target level of $150 million?

POSITION: *Yes, PEF has not justified any increase in its storm damage accrual. PEF's storm damage reserve is at a level that is more than adequate to cover its expected level of non-catastrophic storms based on recent experience. The Commission should order PEF to cease its storm damage accrual entirely.*

ARGUMENT

PEF witness Toomey urges a $10 million increase to $16 million in the annual accrual on a system basis and $14.922 million on a retail basis. The claimed intent is to

maintain a reserve of approximately $150 million. The OPC submits that it is absurd in the context of this case and the plight of PEF's customers to seek such an increase. In fact the OPC contends that the accrual need not be continued. Due to the minimal experience of the last 4 years in annual charges to the reserve and the annual accrual of $6 million, the reserve has grown. Ex.170, Sched. B-4. Nevertheless PEF has offered a flawed analysis performed by the Company's witness Steven Harris that purports to support an increase in the reserve and accrual that seems to be nothing more than a naked attempt to increase cash flow. This approach should be flatly rejected.

As pointed out by Mr. Schultz, Company's reserve has increased significantly over the past three plus years due to the collection of a surcharge from customers and also due to the low level of charges against the reserve. TR 1917. This fact was not challenged by PEF. Although Mr. Toomey claimed the annual accrual of $16 million is "equivalent to the expected average recoverable storm loss" from Mr. Harris' study, this proposition strains credulity. Mr. Schultz exposes concerns with the focus of the study, the assumptions made, recent history and the conclusions that resulted from the study.

Of a fundamental concern is the fact that Mr. Harris testifies in essence that none of the four alternative reserve accruals scenarios made any assumption on what would happen if a lower annual accrual were made. TR 1018. This fact was confirmed in the response to OPC Interrogatory No. 365. TR 1917. Clearly, as Mr. Schultz points out this raises the specter that it was pre-determined that the only way to adjust the

accrual was to increase it. *Id.* At a time when the company is seeking to raise rates, this alone should cause grave concern to the Commission. Mr. Harris admitted that he was not concerned about the impact on the customers when he developed his recommended reserve and accrual size. TR 1053.

Mr. Harris's testimony states that the study determined an average annual loss of $20.2 million. This assumption is a significant driver in the determination of the estimated reserve results. According to the study (Page 1-1) the loss was computed using the results of thousands of random variable storms. As indicated earlier, the use of storm data that may be applicable to areas outside of the PEF service territory could skew the results. Mr. Harris did not seem to have much familiarity with the PEF service territory and seemed to rely excessively on PEF-provided information. TR 1059-1062.

Mr. Schultz also raised the concern that the study provides no indication as to what factors were used to determine an average annual loss rate of $20.2 million. In his rebuttal testimony, Mr. Harris said these factors existed in a database, but he did not provide them. TR 1018. This is hardly compelling evidence for justifying a $16 million revenue requirement. The most troubling fact that the Commission has to confront in considering whether to stick stricken ratepayers with this element of the rate increase is the fact is that since 1994, with the exception of 2004 and 2005, the Company has only charged anywhere from $0 to $9.9 million to the reserve in any one year or an average of $3 million. TR1918.

The OPC contends that the reserve is not intended to recover costs for a storm of that significance because storms of that magnitude are not common and are unlikely to occur. This position is confirmed by Order No. PSC-05-0748-FOF at 5, *In re: Petition for approval of storm cost recovery clause for recovery of extraordinary expenditures related to Hurricanes Charley, Frances, Jeanne, and Ivan, by Progress Energy Florida, Inc.*, Docket No. 041272, Issued July 14, 2005, where the Commission acknowledged PEF's assertion that :

> PEF contends that the costs of severe storms like the 2004 hurricanes are too volatile, irregular in their occurrence, and unpredictable to be addressed in base rates."

The Commission agreed with this contention in stating that:

> Indeed, the record evidence suggests it would have been imprudent to require PEF's customers to fund in advance the substantial additional reserves that would be needed to cover the costs of catastrophic storms, which, statistically speaking, were unlikely to occur. At its current level, PEF's storm reserve will cover only a fraction of the expenses incurred by the company to restore service to its customers and repair its T&D facilities damaged by the hurricanes. By Order No. PSC-93-1522-FOF-EI, we contemplated that relief could be made available for a utility which has experienced such extraordinary expenditures, subject to a review of the prudency of those costs.

Order No. PSC-05-0748-FOF at 10.

Nevertheless, as pointed out by Mr. Schultz, the Company has made its recommendations based on a study that did factor in the impact from those storms. This is despite the fact the Commission in its storm cost recovery decision stated that the

2004 hurricane season was "unprecedented and extraordinary in nature" and the incremental costs of the 2004 hurricanes do not constitute a base rate item. TR 1919.

In addition to the inappropriateness of inclusion of the impacts of catastrophic storms that would not be candidates for restoral charge-offs, the company's study indicates that based on a $16 million accrual there is a 90% chance that the reserve balance could be within the range of negative $53 million and a positive $231 million. Basing a $16 million revenue requirement on such an unreliable range of outcomes (outcomes that are very directionally skewed against the need for relief) a range of $284 million is a significant reason not to continue the accrual, especially in today's economic climate. TR 1920.

Even the Company conceded that it did not factor into the determination of the reserve calculation the impact that the recent storm hardening efforts directed by the Florida Public Service Commission would have on future storm costs. TR 1920; TR 1058-1059. This should be considered a weakness in the development of a reserve cost estimate because the intent of the storm hardening efforts is to minimize damage and cost as the result of the storms. Mr. Schultz points out that the discovery response of the company also concedes this and he notes that this calls into question the appropriateness of the storm accrual study. He points out that he Company seems to downplay the value of the storm hardening efforts (while using it to bolster the O&M spikes for vegetation management in Transmission and distribution – TR 566-567; 666-667) in minimizing storm damage and reserve impacts. He notes that the company

stated "Further, given that these recent additions and changes have been in place only a few years, it is anticipated that it will be a number of years before they would significantly impact the modeled study results." TR 1921. This statement provides a stunning contrast to the Company's claim in a pleading filed in this docket when they were trying to make their Wall Street numbers by seeking to charge $33.1 million of vegetation management and other "storm hardening initiatives" booked in 2009 to (and thus reducing) the very reserve they say is inadequate. In seeking that relief, they claimed that

> PEF's incremental storm hardening initiative expenses advance the same purpose of the rule by preventing storm damage and weather-related outages before extreme weather events occur that require PEF to use reserve resources to restore electric service.
>
> Indeed, preventing tree-caused outages by trimming or removing trees before they can destroy or damage transmission and distribution facilities during storms, for example, benefits PEF's customers far more than using storm reserve funds to immediately fix the damage during or after the storms occur. Reducing or eliminating electric service interruptions caused by severe weather through the Commission's storm hardening initiatives means there may be no need to restore service because electric service was not interrupted in the first place or the time and cost of restoration is diminished if electric service is interrupted. The ability to continue to provide electric service without interruption by severe weather through the storm hardening initiatives benefits PEF's customers and the Florida economy. [1]

These company statements raise some major concern as to whether the study data is appropriate. Significant dollars have been spent, both recently and over the lengthy history of the Company, to upgrade and improve the reliability of the system.

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[1] *In re: Petition of Progress Energy Florida, Inc.*, For Expedited Approval of the Deferral of Pension Expenses, the Authorization to Charge Storm Hardening Expenses to the Storm Damage Reserve, and the Variance or Waiver of Rule 25-6.0143(1)(c),(d), and (t), F.A.C., Filed March 20, 2009, at 12.

Even the damage from the 1921 storm cited by PEF would likely be significantly different today given the improvements to the system over the years and especially in recent years. TR 1921. In addition to this shortcoming, the study also does not adequately consider recent experience. Mr. Harris testified that the recommended financial impacts would be lessened if he had included the most recent two calendar years, but he did not say by how much. TR 1057-58.

Finally, the OPC questions the reasonableness of the company's' chosen target level of $150 million. What is magic about that number, especially in light of the enormity of the rate increase requested and the state of the economy? Mr. Schultz notes that a major missing factor in testimony and in Mr. Harris' study is an explanation as to why a $150 million reserve would be better than $125 million or a $100 million reserve. TR 1922. When asked, PEF only responded that there would be a lower probability that the reserve will be exhausted over a five year period, decreasing the likelihood of having to petition the PSC for an additional storm surcharge. TR 1922. Apart from just stating the obvious, this is not justification for a $16 million accrual or a reserve of $150 million. Furthermore, it is contrary to the purposes for which the surcharge mechanism is established, as noted above. The surcharge may only be necessary when unusual storms occur such as those that occurred in 2004. Mr. Schultz testified that using the methodology of the study, *arguendo*, there is a 2.7% probability that the $150 million reserve could be exhausted by a storm and there is a 4.48% probability that a $100 million reserve would be exhausted by a storm. This is a miniscule increase in probability compared to the annual revenue requirement of the $16 million accrual.

Ratepayers should not be required to continue to fund a reserve that is excessive especially in today's economic climate and especially in light of the fact that requiring that increase could, in 5 years, cause the reserve could be as high as $231 million. TR. 1923; Ex.85, p. 24.

Mr. Schultz exposes the flaws in the company's entire approach relative to asking customers to foot the bill when notes the fallacy in the probabilistic assumptions underlying the request. It is fairly obvious that the Commission has established for PEF a sufficient reserve to cover major storms in the future. As already noted the calculated average cost of storms charged against the reserve excluding the unusual 2004 storm costs and any cost incurred in 2005 results is $3 million over a 13 year period. As shown on Exhibit 170, Schedule B-4, by charging the most recent three year average (2008 storm costs recorded in 2009 are reflected in 2008) of $6.590 million against the reserve without any additional accrual results in a December 31, 2010 reserve balance of $128,651,299. Using Table 3-1 in the study performed by Mr. Harris shows the probability that storm costs in a single year would eclipse the reserve to be approximately 3.4%. That's compared to the 2.7% relied on by the Company in establishing the $150 million reserve. After five years without any accrual and assuming an annual expense of $6.590 million the reserve would be $102,291,706. Again using Table 3-1 in the study performed by Mr. Harris the probability that storm costs in a single year would eclipse the reserve would be approximately 4.4%. The low probability that a more than major storm would occur and eclipse the reserve balance justifies the elimination of an accrual for the near future. TR 1923-1924.

Ratepayer contributions have essentially established an adequate and sufficient reserve as it exists today. Given the low level of recent charges against the reserve, ratepayers should not be required to contribute more to increase that reserve balance based on the excessive annual $20 million charge assumption used in the study and taking into consideration the overall impact the rate request will have on ratepayers in today's economy. The Company's accrual should be reduced to zero because the reserve is sufficient at this time to cover storm costs that are likely to occur based on recent history. This recommendation reduces O&M expense $14.922 million and increases working capital and rate base $27.160 million as shown on Exhibit 170, Schedule B-4.

ISSUE 35: Should unamortized rate case expense be included in Working Capital?

POSITION: *No. *

ARGUMENT

OPC witness Schultz testified that unamortized rate case expense should be amortized over 5 years based on the length of time between rate cases. This testimony went unchallenged and unrebutted. On cross examination, Mr. Schultz agreed that it would also be appropriate to exclude rate case expense from working capital altogether. OPC agrees that due to the length of time between rate cases in recent history that this would be fairer to customers under the circumstances of this case. TR 2000. For this

reason, the OPC recommends that the entire rate case expense included in rate base in the filing in the amount of $2,787,000 should be removed.

<u>ISSUE 36</u>: Has PEF appropriately reflected the impact of SFAS 143 (Asset Retirement Obligations) in its proposed working capital calculation?

<u>POSITION:</u> *PEF has not demonstrated that it has reflected the impact of SFAS 143 in a revenue neutral manner as required by Commission Rule 25-14.014. The Commission should require PEF to record a system adjustment of $398,038,000 (reduction) to rate base to offset the increase in working capital caused by the ARO adjustment.*

ARGUMENT

In submitting its projected financial statements to the Commission (in the form of the MFRs) for rate setting purposes, the Company increased the working capital requirement by $446.569 million ($371.128 million jurisdictional) and reduced plant in service $48.532 million for a total net increase to rate base of $398.038 million. This adjustment according to Schedule B-2, page 2, is "To remove recoverable Asset Retirement Obligations". Beyond this cryptic remark, there was no other explanation or testimony offered to explain the adjustment. TR 1925. Mr. Schultz provided unrebutted testimony that the adjustment appeared to be unsubstantiated and negatively impacting customers and in violation of the rule.

Mr. Schultz challenged the adjustment and sought an explanation by the company as to the accounting and an explanation of how the adjustment was revenue

neutral as required by Commission rule. In the initial filing, no testimony was offered to provide such an explanation. That alone is not appropriate given the significance of the amount in question. In its second opportunity for PEF to provide the justification that should have been provided on March 20th when the MFFRs were filed, the company offered no testimony in response. It must be assumed that Mr. Schultz's challenge and his testimony are correct.

Rules 25-14.014, F.A.C., (Accounting for Asset Retirement Obligations Under SFAS 143) mandates that the implementation of the accounting shall be revenue neutral in the rate making process. As Mr. Schultz notes, the increase in the revenue requirement suggests the adjustment is not revenue neutral. TR 1925.

Further, Mr. Schultz notes that the Company's financial statements state that when the ARO requirement was adopted there was no impact on the income statement. That would mean that the entry or entries were all balance sheet related. The footnotes also stated that an amount equivalent to the liability recorded was added to the asset cost and was to be depreciated over the useful life of the asset. MFR F, p. 78. If the asset amount is not removed from rate base as the liability was then the ratemaking process is not revenue neutral as required by Commission's Rule. The entry made by the Company in this docket removes the liability from working capital and does not have an equivalent entry made to plant, accumulated depreciation and/or the deferred assets included in working capital. Mr. Schultz also noted that in the recent TECO rate case (Docket No. 080317-EI), the working capital calculation reflected a $27.111

million ARO obligation and no adjustment was made by TECO to remove the $27.111 million from working capital. His experience as a witness in that case was the basis for him to testify that the adjustment proposed by PEF is wrong as it seems to be a one-sided entry. TR 1925. The company did not file any information showing where the credit entry was made to neutralize the debit (increases) to working capital.

ISSUE 37: Is PEF's requested level of Working Capital Allowance in the amount of ($9,041,000) for the projected test year appropriate?

POSITION: *Working capital allowance should be increased $24,372,752 after adjusting for removing all unamortized rate case expense and excess storm damage reserve amounts.*

ARGUMENT

The OPC only proposes one specific adjustment to the company's working capital request. The other adjustments reflected on Ex.170, Schedule B-2, impact working capital based on the resolution of other issues. The specific adjustment is to remove all of the unamortized rate case expense from working capital *(See Issue 35) as supported in Mr. Schultz is to remove all $2,787,000 from working capital. TR 2000.

ISSUE 38: Is PEF's requested level of Rate Base in the amount of $6,238,617,000 for the 2010 projected test year appropriate?

POSITION: *No. Ratebase should be $6,348,626,000 after adjustments recommended by OPC witnesses Pous, Dismukes and Schultz.*

ARGUMENT

This is essentially a fallout issue. The OPC is not proposing a specific adjustment to ratebase except for the ARO adjustment discussed in Issue 36.

ISSUE 39: What is the appropriate amount of accumulated deferred taxes to include in the capital structure for the projected test year?

POSITION: *$373,161,000.*

ARGUMENT

This issue is a fallout of other ratebase issues.

ISSUE 40: What is the appropriate amount and cost rate of the unamortized investment tax credits to include in the capital structure for the projected test year?

POSITION: *$4,991,000. The appropriate cost rate is 7.84%.*

ARGUMENT

This issue is dependent upon the final determination of the cost of Common equity and the capital structure proportions determined by the Commission. Based on the ROE and capital structure recommended by Dr. Woolridge, the OPC recommends that the cost rate of 7.84% be applied to the undisputed balance of unamortized ITCs in the capital structure.

ISSUE 41: Should PEF's requested pro forma adjustment to equity to offset off-balance sheet purchased power obligations be approved?

POSITION: *No. Phantom equity should not be allowed. Due to the lack of guidance given by S&P on the risk factor they use, the Commissions support for the collection of payments for PPAs, the fact that the PPAs are not GAAP adjustments and are not liabilities on the company books and the fact that, from a regulatory perspective, PPA payments are unlike debt, no phantom equity related to PPA adjustment to the Company's capital structure is appropriate.*

ARGUMENT

The Company's requested capital structure includes $711 million in phantom, imputed equity to account for the Company's PPAs (Purchased Power Agreements). The $711 million is an artificial construct that essentially acts to create a non-cost based basis for increasing cash flow to PEF at the expense of customers. As described by Dr. Woolridge, the amount that PEF proposes to add to its capital structure is computed by multiplying a risk factor of 25% to the present value of the Company's capacity contracts. In computing credit rating metrics, S&P (Standard & Poor's) applies such a risk factor ranging from 0% to 100% which is intended to reflect the risk of recovery of the PPA payments. The problem however, is that S&P does not indicate how the risk factor that ranges from 0% to 100% is determined. The revenue requirement associated with this phantom equity is $24.7 million utilizing the company's proposed cost of equity and capital structure. TR 1701.

Dr. Woolridge offered his expert opinion that given a recovery mechanism for PPA payments, the financial condition of an electric utility company in Florida is not impaired by entering into these contracts. PEF has presumed that a risk factor of 25% is

appropriate for the Company. However, S& P does not indicate how the risk factor that ranges from 0% to 100% is determined.

PEF witness Sullivan, who is responsible for interactions with credit rating agencies, testified that the company had not provided any evidence about the basis for the factor. Nowhere could the commission review the decision making that yielded the 25% factor. Mr. Sullivan testified that the S&P could have picked a number anywhere from greater than zero to 100, based on the publicly published criteria. In secret, S&P picked the number 25. The Commission did not have an opportunity to understand why. The parties had no opportunity to cross-examine any witness with firsthand knowledge of how the factor was developed. TR 4173-4174. This means that, apart from its other substantive flaws, the evidence of the 25% does not even meet the standard of competent substantial evidence or evidence that a decision can be based on as it violates the fundamental requirements of Section 120.57(1) (b), Fla. Stat.

Mr. Sullivan testified that the value of each percentage point of the factor is about $1 million. TR 4175. He begrudgingly conceded that S&P's reason for stopping at 25% instead of 3% or 5% or 7% was a secret as far as the Commission was concerned. TR 4177. He tacitly admitted that since S&P only assessed risk in 25 percentage point increments such that a risk in S&P's sole opinion of greater than zero must automatically be assessed a factor of at least 25%. TR 4175. This startling and cavalier revelation is another compelling reason to ignore this proposal. The customer cost of that utter lack of precision is staggering based on zero evidence. Theoretically if

the true (yet secret S&P determination) was that the risk was 5% and thus "only" a cost of $5 million, the revenue requirement impact nevertheless would be $25 million due to the secret process. If he even was privy to S&P's secret formula, Mr. Sullivan did not share whatever calculation ***process*** that S&P purportedly used. No S&P witness shared that credit rating company's explanation – if any – for how the factor was derived. TR 1256; 4173-4174. He did offer that the secret S&P process -- whatever it was -- was "not fully vetted." TR 4174.

The OPC submits that it is neither lawful nor fair to customers to ask them to pay $25 million each year to provide a return on fake equity that is not invested by any shareholder nor created by retained earnings (TR 1254), solely because ***only one*** of three rating agencies says they don't trust the ironclad recovery mechanism that the Florida legislature has tacitly acknowledged for cost recovery (See, *e.g.*, Section 366.093(2) (a), Fla. Stat., mentioning the capacity cost recovery clause by name) and which Mr. Sullivan concedes the Commission has always fairly administered. TR 4172. This element of the company's case alone borders on an unconscionable basis to increase customer rates.

Furthermore, the Commission is not bound to honor the irrationalities of a single debt rating agency's evaluation of the Commission's regulatory regime, just so it can please them at a significant cost to customers. The S&P individuals who developed the factor in secret are not authorized under the laws of Florida to set rates or determine

them in any way. TR 1254-1256. The Commission is also not authorized to delegate to a private entity its ratemaking authority.

Dr. Woolridge also points out that Moody's gives short shrift to the S&P call for the phantom equity based on the reasonable assurances that Florida regulation allows cost recovery where he notes that Moody's states:

> "If a utility enters into a PPA for the purpose of providing an assured supply and there is reasonable assurance that regulators will allow the costs to be recovered in regulated rates, Moody's may view the PPA as being most akin to an operating cost. In this circumstance, there most likely will be no imputed adjustment to the obligations of the utility."

He notes that under this scenario Moody's would rate the risk factor at 0% and there would be no imputed debt. TR 3001.

Dr. Woolridge's contentions about the Non-GAAP nature of the payments, the absence from the published financial statements and the fact that PPAs are unlike debt, (TR 3002.), were unchallenged. TR 4171-4172. In fact, Mr. Sullivan agreed with each of these contentions. In the end, the only basis offered by the company for creating a $25 million, customer - funded revenue stream is because S&P made a secret determination about the factor. TR 4160-4177. Mr. Sullivan further implicitly acknowledged that his reliance on prior Commission orders was not appropriate since the express language of the 2005 stipulation was that the recognition there had no precedential value and that the other order cited was not even related to ratemaking. TR 4168-4170. He also confessed that he did not acknowledge in his testimony that the

Commission had rejected a similar PPA adjustment in the 2009 TECO case. TR 4168. In that decision the Commission refused to make the company's requested equity adjustment for many of the reasons offered by Dr. Woolridge and the others raised herein. See, *In re: Petition for rate increase by Tampa Electric Company*, Order No. PSC-09-0283-FOF-EI, at 34-36, Issued April 30, 2009, Docket No. 080317-EI.

Aside from the illegality of setting rates based on a fake cost using unknown secret evidence, Dr. Woolridge's point is well taken that all the criticisms and the Moody's rational perspective means that providing incremental revenues through a higher equity ratio and a higher overall rate of return is unnecessary and would result in an unwarranted revenue benefit to the utility.

In sum, given the complete lack of legally recognizable evidence regarding S&P's guidance on the risk factor, the Commission's and the legislature's historical support for the collection of payments for PPAs, the notion that these are not GAAP adjustments that are not recorded as liabilities on the books of the company, and the fact that, from a regulatory perspective, PPA payments are unlike debt, the PPA adjustment to the Company's capital structure is inappropriate and does not meet the legal standards upon which to determine revenue requirements. The phantom equity should not be considered in PEF's capital structure for ratemaking purposes.

ISSUE 42: What is the appropriate equity ratio that should be used for PEF for purposes of setting rates in this proceeding?

POSITION: *As demonstrated by Dr. Woolridge, a 50% equity ratio is fair to the Company and is conservative compared to electric utilities generally and is consistent with the way investors view PEF's capital structure. *

ARGUMENT

The OPC supports a capital structure, which includes a common equity ratio of 50%, is based on the Company's projected year-end capital structures for the years 2009 and 2010. TR 3000. The essential difference between PEF's requested equity ratio of 53.90 and the OPC's proposed 50% is the improper $711 million PPA related phantom equity. TR 2962. (See also argument on Issue 41, *supra*.) Dr. Woolridge testified that his recommended capital structure is more appropriate for three reasons: (1) PEF's requested capital structure ratios do not reflect the actual capitalization of PEF or Progress Energy; (2) PEF's requested capital structure ratios do not reflect the capitalization of electric utility companies; and (3) PEF's requested capital structure is not based on the company book figures but reflects a number of adjustments, most notably imputed equity. TR 2958-2959. Dr. Woolridge also testified that the equity ratios for the proxy group are on average lower than his 50% equity ratio and thus indicates that OPC proposed equity ratio is conservative. TR 2953: 3056. This is especially generous, when one understands that the actual equity ratio for PEF is 47.51%. TR 2962. Furthermore, the OPC capital structure much more accurately reflects the Company's capital structure as viewed by investors. TR 2999. The OPC's proposed equity ratio includes an equity capital infusion from Progress Energy. This is also conservative in favor of PEF because had Dr. Woolridge used the 13-month average capital structure figures for PEF, at lower common equity ratio would have

resulted, due to the timing of the proposed equity capital infusion. Ironically has Dr. Woolridge also used the Company's proposed capital structure figures and eliminated the $711 million in imputed equity associated with the PPAs, a lower common equity ratio would have also resulted. Thus his recommended capital structure which includes a common equity ratio of 50.0% is very fair, especially given the much lower common equity ratios in the capital structures of electric utility companies.

ISSUE 44: What is the appropriate capital structure for the projected test year?

POSITION: *The capital structure recommended by Dr. Woolridge as reflected in Ex. 170, Schedule D, appended to the testimony of Helmuth W. Schultz, is the appropriate capital structure.*

ARGUMENT

The OPC views the capital structure for ratemaking purposes to rest essentially on the contested items of the equity ratio and the subset of phantom equity related to the PPA adjustment. See discussion under Issues 41 and 42.

ISSUE 45: What is the appropriate cost rate for short-term debt for the projected test year?

POSITION: *3.06%.*

ARGUMENT

Dr. Woolridge testified that a short-term debt cost rate of 3.06 % was appropriate, instead of the company's proposed 5.25 %. TR 2964; 3036. Dr. Woolridge noted that the key issue to consider is the implied three-month LIBOR rate. The company has used an implied three-month LIBOR rate of 2.66 %. Dr. Woolridge proposes using the average for 2009 of 1.0 %. On the stand, he testified that the current three-month LIBOR rate it is 0.30 %. TR 3036. This demonstrates that the OPC short term debt rate is very fair to the company since the updated the short-term debt cost rate would be much lower. TR 2965.

ISSUE 46: What is the appropriate cost rate for long-term debt for the projected test year?

POSITION: *6.05%.*

ARGUMENT

Dr. Woolridge used a long-term debt cost rate of 6.05% versus PEF's 6.42%. TR 2965;3036-3037. The difference is they have included a 2010 financing with a debt cost rate of 6.98%. On the stand Dr. Woolridge noted that the current rates on those bonds would be about 5.5 %. Clearly the proposed PEF long term debt rate of 6.98 % is well above current rates.

ISSUE 47: What is the appropriate return on equity (ROE) for the projected test year?

POSITION: *9.75%.*

ARGUMENT

OPC expert witness Woolridge proposes an authorized ROE of 9.75 %. This is based on his DCF and CAPM analyses set forth in his direct testimony. While his results yielded a range of equity cost rates in the 7.6% -10.5% range (shown in t he table below) utilizing both his and PEF witness Vander Weide's proxy groups, he concluded that due to the uncertainty and volatility in the capital markets, and equity cost rate based on a proxy group of electric utilities, falls in a relevant range of 9.5% - 10.0%. The midpoint of this range is 9.75%. TR 2965-2997; 2998.

Summary Equity Cost Rate Results

	DCF Approach	CAPM Approach
Electric Proxy Group	10.3%	7.6%
Vander Weide Proxy Group	10.5%	7.7%

Dr Woolridge testifies that Dr. Vander Weide's requested return on common equity is too high primarily due to: (1) the full-year adjustment to the dividend yield in his DCF approach; (2) an inflated growth rate in his DCF approach; (3) excessive equity risk premiums in his RP and CAPM approaches; (4) unwarranted flotation cost adjustments to his equity cost rate results; and (5) an erroneous leverage adjustment based on the market value capital structures of his proxy group. TR 2948.

To evaluate the accuracy of analysts' EPS forecasts for the market as a whole, Dr. Woolridge compared actual 3-5 year EPS growth rates with forecasted EPS growth rates on a quarterly basis over the past 20 years for all companies covered by the I/B/E/S data base. TR 3007-3008. The results showed that for the 3-5 year period prior to the first quarter of 1999, analysts had projected an EPS growth rate of 15.13%, while in the same period companies only generated an average annual EPS growth rate 9.37%. His study and analysis demonstrated an upward bias in growth rate estimates. TR 30007-3008, Ex.166, p. 1, Panel A.

The conclusions Dr. Woolridge reached based on pre-2000 results have persisted in the aftermath of the conflict of interest reforms of the early 2000s. Despite new regulations, the nature of analysts' EPS growth rate forecasts has not significantly changed and continues to be overly-optimistic. Analysts' long-term EPS growth rate forecasts before and after 2003 reforms, are double the level of historic GDP growth. Furthermore, historic growth rates in GDP and S&P 500 EPS have been in the 7% range.

Dr. Woolridge further refined his analysis to determine if the same results held true for electric utilities. TR 3010-3011; Ex. 166, page 3. The same general relationship of nearly two times the optimistic error was found, though at a lower differential. These results are consistent with the results for companies in general -- analysts' projected EPS growth rate forecasts are upwardly-biased for electric utility companies. *Id.*

Clearly, Dr. Vander Weide's reliance on these upwardly biased growth rate estimates is a significant flaw. In an effort to rebut these criticisms, Dr. Vander Weide cites studies that purport to show the opposite. However, on cross examination, the witness was forced to concede that these studies only measured quarter–to-quarter growth and not the relevant long-term five year growth rates that are relevant for purposes of measuring PEF's cost of common equity for rate setting purposes. TR 2429-2430; 3037. Clearly, the Commission should be reluctant to rely on the skewed projected growth rates offered by PEF's witness.

The OPC also highlights its challenge to Dr. Vander Weide's risk free rate and equity risk premium assumptions in his DCF calculation. Dr. Woolridge used a risk-free rate of 4.5 %. Dr. Vander Weide has used 4.87 %. Dr. Woolridge pointed out in the hearing that the current rates are actually about 4.0 %, so interest rates are clearly well below the interest rates that both used. TR 3037-3038.

With respect to an equity risk premium, OPC's witness Woolridge has used a 4.37% rate. In contrast, he notes that Dr. Vander Weide used a historic rate of 7.1% and a projected rate of 8.83%. Dr. Woolridge pointed out there are numerous empirical errors with using historic risk premiums, citing Professor Jay Ritter at the University of Florida, who says using historic returns is one of the biggest mistakes taught in finance to compute an equity risk premium. TR 3026 - 3027.

Finally, the OPC takes issue with Dr. Vander Weide's unnecessary adjustment for flotation costs and a completely gratuitous $51 million adjustment for leverage based on its 104 basis points that it adds to his derived 11.5% equity cost rate. TR 1367. This bogus adjustment is based on the market value to book value difference of the capital structures which Dr. Woolridge shows is incorrect. Dr. Vander Weide conceded on cross examination that in neither the over 400 cases in which he has testified nor in the cases since the 1990s where he has offered this upward adjustment is he aware of anywhere the adjustment has been accepted by a regulatory commission. TR 1368.

Finally, Dr. Woolridge points out -- essentially as a sanity check -- that truly the biggest issue involves the number 12.54% itself. He points to an analysis that implies an overall stock market return of 15 % in the future. Historically, the stock market has provided 10% return, so using 12.54 % is essentially implying that the stock market in the future will have a 50 % higher return than the stock market of the past. TR. 3038-3039.

ISSUE 48: What is the appropriate weighted average cost of capital including the proper components, amounts, and cost rates associated with the projected capital structure?

POSITION: *7.48%. See Exhibit 170 page 1.*

ARGUMENT

After resolution of Issues 40-47, consistent with the OPC positions, the OPC supports the capital structure shown on Exhibit, 170, page 1 and below:

Description	Per OPC Capital	Adjusted OPC Capital	Ratio	Cost Rate	Weighted Cost Rate
Common Equity	2,948,994	2,948,994	46.94%	9.75%	4.577%
Preferred Stock	21,211	21,211	0.34%	4.51%	0.015%
Long Term Debt	2,821,103	2,821,103	44.91%	6.05%	2.717%
Short Term Debt	106,680	106,680	1.70%	3.06%	0.052%
Customer Deposits - Active	119,781	119,781	1.91%	5.95%	0.113%
Customer Deposits - Inactive	1,248	1,248	0.02%	0.00%	0.000%
FAS 109 DIT-Net	(114,791)	(114,791)	-1.83%	0.00%	0.000%
Deferred Taxes	329,399	373,161	5.94%	0.00%	0.000%
Tax Credit	4,991	4,991	0.08%	7.84%	0.006%
	6,238,615	6,282,378	100.00%		7.480%

Weighted Cost of Debt (plus customer deposits)	2.88%

ISSUE 49: Is PEF's projected level of total operating revenues in the amount of $1,517,918,000 for the 2010 projected test year appropriate?

POSITION: * Projected operating revenues should be adjusted by $8,646,274 as recommended by OPC witness Dismukes to correct for inadequate attribution of costs to the non regulated operations. Projected test year revenues should be at least $1,526,564,000. *

ARGUMENT

With respect to OPC witness Dismukes' testimony regarding CR3, refer to the discussion of Issue 85.

ISSUE 59: Is PEF's proposed allowance of $2,412,100 for directors and officers liability insurance appropriate?

POSITION: *No. Directors and Officers Liability insurance expense should be disallowed it its entirety as those costs are incurred only for the protection and benefit of the shareholders who are ultimately responsible for hiring directors and officers. *

ARGUMENT

PEF did not offer any testimony in rebuttal to OPC witness Schultz that the DOL insurance should be disallowed. PEF has included $2.2 million of expense in account 925 for Directors and Officers liability insurance for $300 million of coverage. This allocated premium expense protects shareholders from the decisions they made when they hired the Company's Board of Directors and the Board of Directors in turn hired the officers of the Company. TR 1953. The OPC contends this is a business expense that the Company has elected to incur primarily for the benefit of shareholders. The OPC also challenges the cost for $300 million of coverage as being excessive and whether even if it is the type of cost that the customers should absorb along with the other excesses requested by PEF, whether the cost for that level of coverage is appropriate to pass on to ratepayers.

The Commission has in the recent past both allowed and disallowed DOL insurance costs. The OPC contends that the better course of action is to disallow these costs. This is especially the case in times when such as these. Nevertheless, if the Commission has any concerns about this expense, Mr. Schulz offers unrebutted testimony that is a basis for sharing the cost. TR 1957.

Nevertheless, the issue is really whether the cost is one that is beneficial to ratepayers and whether it should be borne by ratepayers as opposed to shareholders. As Mr. Schultz pointed out, contributions and lobbying are deemed legitimate business expenses but they are not deemed appropriate costs to be passed on to ratepayers. In fact other regulatory agencies have also determined that the cost for DOL insurance to be a legitimate business expense but that the cost should not be borne totally be ratepayers. Mr. Schultz points to Connecticut there has been multiple decision where the amount allowed to be recovered from ratepayers has been limited. He notes that in Docket No. 07-07-01 the Department limited the recovery by Connecticut Light and Power for DOL insurance cost from ratepayers to 30% because it was determined that ratepayers should not be required to protect shareholders from the decisions they make in electing the Board of Directors. Mr. Schultz also points out that on February 4, 2009 the Department determined that United Illuminating Company could only recover 25% of the cost of DOL insurance from ratepayers. In New York in Case 07-E-0523 the Commission did not disallow the cost recovery of DOL insurance based on the judge's recommendation even though the a disallowance of such cost could be made based on Commission policy. The issue was raised again when Consolidated Edison Company

filed in Case 08-E-0539. In the final decision the Commission ruled that $300 million of coverage was excessive based on the comparisons to similar companies and disallowed the premium associated with $100 million excess and then disallowed 50% of the premium associated with the $200 million that was determined to be reasonable. In the discussion the Commission notes that D&O insurance provides substantial protection to shareholders who elect directors and have influence over whether competent directors and officers are in place while customers have no influence. The Commission further stated at page 91 that:

> "We find no particularly good way to distinguish and quantify the benefits of D&O insurance to ratepayers from the benefits to shareholders, especially taking into account the advantage that shareholders have in control over directors and officers. We believe the fairest and most reasonable way to apportion the cost of D&O insurance therefore is to share it equally between ratepayers and shareholders."

TR 1953-1955; Exhibit 298, p. 91. PEF did not offer testimony in rebuttal to Mr. Schultz on this issue.

OPC urges total disallowance of the $2,750,650 ($2,412,100 jurisdictional) because the cost provides a direct benefit and protection to shareholders. In each of the cases cited above the company argued that the cost is a necessary and prudent cost that is required to attract and retain competent directors and officers. There are regulatory decisions that have indicated that although DOL insurance is a necessary cost of doing business, the ratepayers should not be required to pay the full cost of coverage because the insurance primarily benefits shareholders. In ratemaking, the cost should follow the benefit and the benefit of this insurance clearly inures first and foremost to

shareholders. As Mr. Schultz points out, shareholders will likely be the one that makes a claim against the policy. TR 1956.

ISSUE 60: Is PEF's proposed allowance of $3,669,000 for 2010 injuries and damages expense appropriate?

POSITION: *No. Since it appears that the injuries and damages reserve expense is not supported by the record or the company's efforts to justify it and the amount of $4,778,604 -- which includes dollars identified as related to both Injuries & Damages Expense and A&G Office Supplies & Expense -- should be disallowed.*

ARGUMENT

The OPC proposes an adjustment to this account because there is no support in the record for these dollars. Importantly, PEF did not offer any testimony either supporting the amount or rebutting Mr. Schultz's testimony on this point. The original filing as shown on MFR Schedule B-21, Page 1 of 4, showed there was no expense in the projected rate year for injuries and damages. The witness for Schedule B-21, Mr. Toomey, does not discuss injuries and damages in his testimony in this case. As shown on Exhibit 170, Schedule C-9, an adjustment of $5,449,303 or $4,778,603 on a jurisdictional basis is warranted. TR 1957-1960.

There was an expense in this account in the projected test year 2010. The Company was requested to verify whether the MFR was correct and if the MFR was not correct the Company was requested to provide the costs included in the projected test year 2010 by budget center. The response to OPC Interrogatory No. 342 indicated the

MFR was not correct and that there was $2,694,313 in various budget centers and $1.7 million in the legal department's budget. However, it turns out that this information was also incorrect.

The Company was requested in OPC Interrogatory No. 386 to explain what the costs that were identified as either "Other" or "Purch" with the classification of "Salaries and Wages" that were included in the budget provided in response to OPC POD No. 37. The response indicated that the "Salaries and Wages" identification was incorrect and should have been labeled "A&G Office Supplies & Expense". In addition the response indicated that the nuclear budget had misclassified $450,000 that should have been included in "A&G Injuries & Damages". That would mean that there was at least $4,844,313 ($2,694,313 +1,700,000 + 450,000) included in the 2010 projected year. Mr. Schultz analysis of the budgeted costs actually revealed $5,020,063 was included. As shown on Exhibit 170 Schedule C-9, the legal budget included $1,825,000 plus another $50,750 not the $1,700,000 indicated by the Company. The $1,825,000 was verified in the response to OPC POD No. 274. He further noted the existence of a PEF difficulty identifying costs and having errors in the process itself. TR 1958. This calculation was not rebutted.

The Company failed to provide any justification for any cost for 2010. This is important considering the fact that it appears that the 2008 did not have any expense. The Company provided the 2008 budgeted and actual cost for 2008 in response to OPC Interrogatory No. 389 and as shown on Exhibit 170 Schedule C-9, there was a negative

expense in 2008. It would not be appropriate for the Company to be allowed an expense in the projected test year when there was no expense in the base year 2008. This is especially true when there was initially an indication that zero expense was included in the projected year and when there is absolutely no testimony or justification for any amount in the projected test year 2010.

ISSUE 61: Is PEF's proposed allowance of $23,228,000 for 2010 A&G office supplies and expenses appropriate?

POSITION: *No. $2,331,755 of A&G Office Supplies and Expense should be disallowed as a result of the failure to explain or justify those expenses in the 2001 budget.*

ARGUMENT

As shown on Exhibit 170 Schedule C-10, the OPC is recommending a specific adjustment of $2,688,677 ($2,331,755 on a jurisdictional basis) for cost included in A&G Office Supplies and Expense that are not appropriate costs to be included in rates especially in today's economy. On Exhibit 170 Schedule C-10, lines 1 and 2, Mr. Schultz shows how the amount of the $2,688,677 of improper costs is determined. The first adjustment of $1,488,677 consists of $1,268,677 for events such as the Tampa Bay Lightning for $59,900, the Tampa Bay Buccaneers for $139,527, the Orlando Magic for $20,000 and more. The two listings of events and costs are included as Exhibit 172. The remaining $220,000 is for service awards.

The OPC also recommends removal of $ 1,200,000 for what is described as "Corporate Managed Account". This appears to be a large petty cash account for the president's budget center. The Company did not provide any supporting documentation for this expense as requested therefore the cost is not justified and should be excluded from rates. TR 1963

Mr. Schultz notes that there is no evidence that the costs have been removed. The costs were budgeted in account 921 "A&G Office Supplies and Expense". In response to OPC Interrogatory No. 391 the Company supplied a reconciliation that links the budget costs reviewed to MFR Schedule C-1 and in turn to MFR Schedule C-2. The only adjustments O&M Expense reflected that remove budgeted costs are the aircraft adjustment and the advertising. The costs are not aircraft costs and the advertising adjustment of $3.388 million relates to labor costs in account 920 and advertising costs in account 9301. Again and importantly, the company did not offer testimony in rebuttal to this issue. TR 1963-1964.

ISSUE 62: Should an adjustment be made to PEF's proposed 2010 allowance for O&M expense to reflect productivity improvements, if any?

POSITION: *Yes. The Commission should recognize the company's incentive to implement post rate case award efficiencies beyond those reflected in its filing. PEF's strategic plan sets as a goal achievement of annual productivity gains of 3-5%. The Commission should utilize the more conservative target of 3% and reduce projected O&M expense by $13.034 million.*

ARGUMENT

One of the most striking features of the evidence and the live testimony of this case has been the dual standard of assertions with respect to PEF's ability to control costs, the company budget and achieve the true measures of success in the business the PEF is in. To the Florida Public Service Commission, they urge that they are in dire straits and need the half-billion dollar rate increase in order to provide service and build the LNP nuclear plant. To investors and Wall Street, they brag about the ability to contain and cut costs in a sustainable way. Ex. 293, pp. 14, 17, 24. The say they are targeting "minimal" O& M growth (Ex 293, p.17), yet the numbers are off the chart for 2010 – coincidently the test year. TR 403-412:435;578-580;676-678. They say to the Commission that they recognize that customers are hurting, but the ***projected*** costs they want customers pay are spiking by unprecedented levels while the costs borne solely by shareholders are dramatically scaled back. TR 1967. They concede that they have made no effort to "scrub" the budget in the test year in the MFRs or make sure that they are representative of going-forward expense levels, (TR 1722-1724) but again they tell Wall Street that they are targeting reduction in 2009 budgets and undertaking "significant belt tightening efforts." Ex, 293, p. 24. Yet in testimony before the Commission for 2009, we heard a mere $3.5 million budget cut possibility (with no carry forward to 2010) and minimal belt tightening with no quantification – mainly in the *de minimis* area of meals and entertainment, conferences and travel. TR 458. Hardly the rosy picture Wall Street is told. None of these cost containment efforts are reflected in the test year presentation for the Commission's consideration. TR. 459-460. Nothing but spikes in O&M and generous pay increases and incentive compensation

and increases in employee counts. For Wall Street they emphasize the need to meet the guidance of EPS growth and tell them that Florida contributed the lion's share of the overall corporate growth in a year that they used for a test year to get an interim increase. They even told Wall Street that the results contributed by Florida in 2008 were "significant earnings growth" and "what you would expect from a utility with $2.7 billion in capital expenditure over the last two years" Ex. 293, p.45. All the while PEF claims that regulated reported earnings for 2008 were inadequate. It is clear from the statements to Wall Street and the actions in the March 20, 2009 filings that PEF is willing to take the measures necessary to meet its EPS guidance, even if it means seeking extraordinary relief and cost deferrals and raids on the storm reserve, TR 2553-2554;Ex. 293, p. 24. It is not difficult to imagine that after achieving relief before this commission based on the dreary contra-picture painted in the filing, that the Company would be well positioned to engage in "cost cutting and productivity and efficiency gains against what are today merely projected costs.

In light of the evidence at hearing regarding the company's commitments to investors that they will achieve ***annual, sustainable efficiency and productivity gains*** of 3-5% (TR 2558-2560; Ex. 293) and the fact that in several large categories the O&M expenses have been dramatically higher levels projected for the test year over actual or historical levels, the Commission should be reluctant to fully accept the company's O&M expense levels as filed. The OPC proposes a productivity adjustment as described by Mr. Schultz. He correctly notes that the company's request is excessive because it reflects an overloading of unsupported costs into the test year, and it does not reflect the cost savings

that should be generated from any increase in maintenance and improvements in operations. In addition the Company can be expected to undertake every effort after rates are established to minimize its future costs so the corporate strategy can be achieved.TR 1964. They did this in 2008 and 2009 and there is no reason to believe the same wouldn't hold true in 2010 and beyond. Ex. 293.

As for specifics, Mr. Schultz testifies that PEF's testimony identifies a number of improvements without any explanation as to where the cost savings are reflected. The example he provides is that PEF witness Sorrick indicates that there will be cost savings from the Hines Power Block 4 Combustion Optimization Package in the future and that the Anclote Cooling Tower project is expected to reduce maintenance cost in the future. There has to be some benefit to ratepayers from the significant increase in spending being requested that will offset the cost. If that cost savings is not reflected then there is the risk that it will flow through to shareholders absent a regular earnings adjustment filing by the Company. If rates are set based on the significant spending without recognition of the benefits that are forthcoming, when the cost savings occur there is no way for ratepayers to receive that benefit.

Mr. Schultz describes the 2009 Progress Energy Florida Strategic Plan. An important point in the strategy commitment is the following statement "The overall mission of Progress Energy is to reward its investors by providing above-average total shareholder returns over a continuous timeframe." This thought process is further emphasized in the financial objectives that include "Annual EPS growth (4-5%)",

continue dividend growth and an annual TSR of 8-10%. TR. 1965. This strategy is exactly the one that was communicated to Wall Street at the same time the case was being filed, but the company did not include the benefits of these measures in the filing. TR 2558-2560; Ex. 293, p. 24. Central to this strategy is the commitment to annual productivity gains of at least 3%-5%. This emphasis on productivity gains is mentioned on pages 7 and 27. TR 1965.

Most saliently, Mr. Schultz highlights the stark contrast in PEF's motivation in controlling shareholder costs during tough times, while customer borne costs appear to skyrocket. This can be seen in the increases requested for above the line test year costs while 2010 budgeted shareholder costs have declined. Mr. Shultz testifies that the Company stated that the declining economic condition was the reason that donations and civic expenses were less in the 2010 budget than in 2008. A budget reduction of approximately 20% of below the line costs for civic functions and donations is an important fact when contrasted with the increase in above the line costs. Business as usual for above the line costs and belt tightening for shareholder costs indicates that the focus is on shareholder returns. TR1967.

As shown on Exhibit 170, Schedule C-11, the adjustment Mr. Schultz recommends is a reduction to O&M expense of $13.034 million, by taking PEF's requested 2010 O&M Expense net of labor and assuming a 3% productivity factor. The 3% is the low end of the Company strategy. TR 1968.

As a contemporary example by a large state (New York) dealing with a very similar concern, Mr. Schultz points to a similar adjustment of a far greater impact for Consolidated Edison Company in Case 08-E-0539. TR 1968; Ex.298. In that decision the New York Commission determined that because of the increased investment in plant (similar to PEF's filing reflecting an increase in plant investment) there would be an increase in productivity and ruled that the productivity adjustment should be 2% instead of 1%. After evaluating the issues, the Commission made an additional adjustment reducing O&M cost by $60 million. This adjustment factored in the downturn in the economy and the impact the company's request would have on ratepayers. In the decision the company was ordered to implement austerity programs to constrain costs and tighten belts to limit discretionary spending. Mr. Schultz $13 million adjustment pales in comparison.

ISSUE 63: Should an adjustment be made to PEF's requested level of salaries and employee benefits for the 2010 projected test year?

POSITION: * As demonstrated by OPC Witness Schultz, a reduction of $53,831,980 ($47,540,636 on a jurisdictional basis) be made to compensation expense.*

ARGUMENT

The total payroll requested is $489,779,401 and the amount included in expense is approximately $354,600,286. The Company's request for compensation is excessive and inappropriate. As shown on Exhibit 170, Schedule C-3, Page 1 of 2, Mr. Schultz recommends a reduction of $53,831,980 ($47,540,636 on a jurisdictional basis) be

made to compensation expense. The components of these adjustments are discussed in detail in Issues 64-67.

ISSUE 64: Are PEF's proposed increases to average salaries for 2010 appropriate?

POSITION: *No. PEF's proposed 4.7% overall increase in base salaries is excessive in light of the labor market specifically and the economy in general. The overall increase should be held to 2.35%, resulting in a reduction to payroll expense of $12,209,439. *

ARGUMENT

The Company's request totally ignores the state of the economy and the impact that the request will have on the citizens of Florida who are served by the Company. The request includes business as usual pay increases, an increase in payroll for employees that have not been hired yet and an increase in incentive compensation, when the current amount of incentive compensation is not justified.

The Company's filing does not identify the amount of overtime included in the Company's request. The Company MFR Schedule C-35 entitled "Payroll & Fringe Benefit Increases Compared to CPI" does not reflect any overtime compensation. The Company has elected to bury the overtime costs in various other MFR schedules. This is contradictory to the purpose of the MFRs. The total amount of overtime in the projected test year was identified in the response to OPC Interrogatory No. 127. The portion expensed was estimated based on the expense ratio for the payroll costs as shown on MFR Schedule C-35 and the response to OPC Interrogatory No. 128 that

identified the portion of payroll from MFR Schedule C-35 that was expensed in the projected test year. TR 1927.

The Company's response to OPC Interrogatory No. 124 indicates the budgeted increase for non-bargaining positions was 3.75% in 2009 and 2010. For bargaining positions the increases are budgeted at 3% for 2009 and 2010. In a follow up request the Company stated in response to OPC Interrogatories No. 301 and 302 that the increases identified in the response to OPC Interrogatory No. 124 is only the merit increase and that the budgeted labor as shown on MFR Schedule C-35 also includes promotions, off-cycle salary adjustments, market based adjustments and contractual step ups. As shown on Exhibit 170 Schedule C-3 the average base pay reflected in the filing for a PEF employee increased 9.4% from 2008 to 2010. That is an increase of 4.7% per year. Simply put, that significant increase reflected in the projected test year compensation is a business as usual increase which ignores the current economic climate and ignores measures taken by other companies, both regulated and unregulated in curbing the amount of compensation and maintaining and/or cutting costs.

Mr. Schultz notes that late in 2008 and in early 2009 a number of companies were identified in the media that were either freezing compensation and/or cutting compensation in lieu of reducing employees. A study by Mercer dated June 17, 2009 indicated that 69% of companies surveyed had 2009 budgeted aggregate base pay equal to or below the 2008 budget. TR 1928. Company compensation witness DesChamps acknowledged that a Hewitt survey in August of 2009 (U.S. Salary Increase Survey) --

which is one that he said he would use in determining 2010 compensation -- indicated that the average salaried exempt budget increases were down to 1.8% compared to the prior years' projection for 2009 of 3.8%. TR 3282-3283.

Mr. Schultz points to several jurisdictions where the Commissions have limited customer impact of compensation increases. TR 1928. Even in Florida recently, People's Gas System in Docket No. 080318-GU eliminated the executive increase and reduced the employees' compensation increases. PEF will have none of it and plows ahead with its high-flying increases. Notably, when the economy was doing well back in 2006 and 2007 the increase was budgeted at 3.5%. As economic conditions deteriorated and customers could be asked to pay in the ratemaking proces, the budgeted percentage was increased to 3.75% in 2008. This action counters claims by the Company that they have tried to minimize costs and the request for an increase in rates charged to the customers of PEF. TR 1929.

Because of this, the OPC recommends that the customer's share of the annual average increase be limited to 2.35% or one-half of the Company's 4.7% calculated increase in base pay. As shown on Exhibit 170 Schedule C-3, Page 2 of 2 the reduction to an annual increase of 2.35% reduces the proposed average base salary from $75,170 to $71,979 and that reduces payroll expense by $12,209,439.

ISSUE 65: Are PEF's proposed increases in employee positions for 2010 appropriate?

POSITION: *No. The Company's proposed allowance for filling 80 positions should be rejected to account for the overall level of vacant positions that will likely exist in the test year. This reduces payroll expense $4,156,891. *

ARGUMENT

The Company provides no rebuttal to OPC witness Schultz's recommendation to not allow rate recovery for 80 projected new positions for the 2010 test year. Nevertheless, the Company is requesting that the number of employees allowed in rates through capitalized and expensed labor be increased a net 370 positions from 4,929 Full Time Equivalents (FTEs) in 2008 to 5,299 FTEs in the 2010 projected test year. The proposed increase also ignores the impact that will be reflected on customer bills in an economy that is already difficult. This unsubstantiated increase also should be viewed with extreme caution by the Commission in light of the commitments made to investors about achieving efficiency and productivity gains in order to meet EPS commitments in the area of Wall Street guidance. Ex. 293, p. 24. Of significance, when asked by Staff if there were any discussions about further reductions in PEF's workforce in 2010, CEO Vincent Dolan, seemed to hedge his answer (TR 300-301) and his caginess was less than reassuring or convincing in light of the other evidence in the case and the purely projected nature of the filing and the fact that so many purportedly planned positions remained unfilled.

The test year request assumes that positions budgeted for will be filled and it assumes that future vacancies will not occur. The increase is not appropriate. Mr. Schultz testified that a Mercer survey indicated that 2009 budgeted base pay would be equal to or less than the 2008 budget for 69% of the companies surveyed. For that to be accomplished for PEF there can be no pay increase and no additional employees added unless pay cuts are implemented. The record is clear that PEF is not reducing payroll, and therefore the Company's plan to increase pay and add employees obviously ignores the economic events that other companies and ratepayers are forced to recognize. TR 1930.

The OPC also advances the concern that though the Company budget is established based on current employees and proposed additions, the Company's human resource department does not maintain budgeted employee level detail. Month to month changes can be tracked but a comparison to budget cannot be provided to evaluate how the Company projections are performing. This is a concern with respect to the ability to provide valid justification for the projections in employee levels for the test year. Based on the response to OPC Interrogatory No. 297, the Company had 4,929 employees as of December 31, 2008 and 4,911 as of March 31, 2009. The decrease of 18 employees is evidence that the fact of vacancies cannot be ignored and raises concerns whether the increase projected is reasonable. TR 1931. Mr. Schultz was not refuted on this.

Furthermore the company also stated that, in fact, 497 positions are proposed to be added and that 127 positions will be eliminated for a net increase of 370 positions. The Company response eliminates 416 positions from the explanation requirement by indicating that the 387 positions are "Clause Positions" and 29 positions are "Allocated Headcounts". As Mr. Schultz points out, the Company believes these positions do not require justification. The response continues by stating that after making the two adjustments there only 81 of the net addition of 370 positions that represent true position increases affecting base rates. The 81 positions consist of 36 new positions and 45 vacancies. Only 10 of the new positions have been filled and only 20 of the vacancies have been filled. However, based on the employee count as of March 31, 2009, more vacancies have occurred. The company also indicates that only 33 of the 36 new positions were identified and/or referenced in Company testimony. That means that along with no justification being provide for the so called "Clause Positions" and the "Allocated Headcounts", the filing has failed to provide any justification for the other 48 positions (81-33) included in the Company's request. TR 1932

The OPC recommends that the allowance for 51 unfilled positions the Company classifies as true position increases be removed and the allowance for 29 service company positions be removed for a total adjustment of 80 positions. Mr. Schultz's assessment of the situation was not rebutted by PEF. As shown on Exhibit 170 Schedule C-3, Page 2 of 2, using Mr. Schultz's adjusted average base salary of $71,979, the payroll expense would be reduced $4,156,891. It is easy to see how PEF can help be a significant contributor to consolidated EPS growth and achieve productivity gains

if they are granted a rate increase based on a projected level of employees that will never be achieved.

ISSUE 66: Should the proposed 2010 allowance for incentive compensation be adjusted?

POSITION: *Yes. PEF's expense in the amount of $25,371,639 for incentive compensation and $12,094,011 for long term incentive compensation should be disallowed as providing no benefit to ratepayers and constituting nothing more than added compensation that is inappropriate at any times, but especially in today's economic climate.*

ARGUMENT

The OPC supports an adjustment to remove all incentive compensation as recommended by OPC witness Schultz, PEF has not demonstrated that incentive compensation is truly incentive based. As testified by Mr. Schultz true incentive compensation is compensation in addition to base pay that can only be justified if the performance of employees results in improved customer service, customer reliability and improved financial results. With those improvements there is a benefit to both ratepayers and shareholders. The cost for incentives should follow the benefit. Therefore, if the improvement in operations can be shown in service, reliability and earnings then it would be appropriate for shareholders and ratepayers to share the cost of that improved performance. If service and reliability does not improve, but profits do, then the shareholders are receiving a greater benefit and they should be responsible for the cost. It is not appropriate to assume that incentive compensation is a required part of a compensation package that makes it a cost that should automatically be passed

through to ratepayers. TR 1933. Against this backdrop, the OPC submits that PEF has failed completely in meeting its burden to justify the level of incentive compensation that should be recovered from customers in the form of higher rates.

This is especially true when taking into consideration the current state of the economy, the inclusion of the payment for incentive compensation in rates is even more inappropriate. The Company is requesting that an increased level of incentive compensation be included in rates as if the economy has not had a downturn. This notion borders on the hypocritical when one takes into consideration the fact that the pension costs requested by the Company reflects the lowest point of downturn in the economy (and now ignores the significant improvement in the market), while base compensation increases and incentive compensation are treated as business as usual. To ask ratepayers who may be unemployed and/or who have had to make other concessions because of reduced or frozen compensation to pay for PEF's excessive incentive compensation is not appropriate. TR. 1934.

Mr. Schultz testifies that that it is not reasonable to accept the Company's contention the payment of incentive compensation is required to attract, retain and motivate employees. He also explains that the studies "supporting" the 50th percentile argument are skewed by a limited few organizations. And even more of a concern is that the very companies included in the supporting studies often have at least a portion of incentive compensation excluded from rates. TR 1934. What is good for the goose should be good for the gander. PEF doesn't see it that way. The Company stubbornly

adheres to the notion that there is a market based compensation that they benchmark against, yet they ask the Commission to ignore the way those compensation arrangements are funded – increasingly by shareholders or by a sharing of ratepayer and shareholder funding. Nevertheless, PEF witness DesChamps acknowledged a long list of companies in the cited market based peer groups who had compensation disallowed in ratemaking. TR 3275-3279. Mr. Schultz also notes that he is unaware of any jurisdiction where the disallowance of incentive compensation has resulted in compensation being adjusted so as to affect the comparability of the results in the studies that PEF benchmarks against. He noted that the Company agreed with this assessment in a discovery response. TR 1936.

Mr. DesChamps further agreed with Mr. Schultz incentive compensation does not appear on the list of drivers that cause an employee to select a company. TR 820. In fact it isn't even in the top ten. TR 1935-1936. This destroys the myth that so called incentive compensation is needed to attract employees.

Beyond the problem with benchmarking and ignoring the trends of other jurisdictions making sharing or disallowance decision, a bigger problem is that the incentive compensation plans seem to be geared more toward increasing shareholder value and not ratepayer benefit. As Mr. Shultz testifies, the incentive compensation plans are directed at improving the financial performance of the Company. PEF's emphasis, therefore, is the shareholders interest. The Management Incentive Compensation Plan (MICP) states first and foremost that the purpose of the plan "is to

promote the financial interests of the Company". It continues with the rhetoric regarding attracting and retaining employees and motivating with goals through the payment of cash incentives. Therein lies more of the problem, the incentive compensation plan is based on goals that do not require above average performance.

The plans emphasis is on financial performance of the Company which is directed toward shareholders. The Staff elicited compelling evidence on cross examination that the payment of incentive compensation is heavily skewed towards exclusively shareholder goals. A key buzz phrase in fact was for the incentive compensation to "aligns interests of shareholders and management." TR. 3354-3361: Ex. 310. Companies argue that if there is financial success that ratepayers benefit. That assertion is not necessarily true. The financial success may be attributed to cost reductions in customer service areas. To add further concern, the results can be adjusted based on the CEO's discretion. Mr. DesChamps concurred with Mr. Schultz on this point as well. TR 3262-3263.

The term incentive means to stimulate. There is no stimulation if goals are not increased. Failure to raise the bar to promote improvement means that the plan can be little more than designed to provide added compensation at the expense of ratepayers. The Company payout for incentive compensation is further evidence that the plan is simply additional compensation that is expected by employees and not driven by an incentive to improve performance that will benefit ratepayers.

The response to OPC Interrogatory No. 131 shows that in 2006 99.6% of eligible employees were awarded an incentive payment. In each of the years 2007 and 2008 the awards were made to 99.7% of the eligible employees. With approximately 5,000 employees it is difficult to believe that performance was so high among the employees that almost everyone earned a payment. This is further evidence that this is just added compensation and not truly incentive pay. Mr.DesChamps agreed with Mr. Schultz that this was the number of employees that received incentive compensation, yet he could not state with certainty that all of the employees delivered the superior level of service that would be called for. TR 3261. He also conceded that he was not aware of a year in which incentive compensation was paid. TR 3263-3264. This certainly lends strong credence to Mr. Shultz expert opinion that PEF's "incentive compensation is little more than added compensation. TR 1936.

A review of the plans and the changes in the plans that occurred failed to identify a reference to ratepayers. As indicated earlier the purpose is to promote the financial interest of the Company and share achievement with employees. Absent actual documented proof that the plan provides improved performance to ratepayers, there is no justification for ratepayers to bear any portion of the incentive compensation costs. Other jurisdictions have recognized this fact and have either totally disallowed incentive compensation or they have limited the recovery in rates. Florida should be no different.

Mr. Schultz points the Commission to several notable jurisdictions and their treatment of incentive compensation for ratemaking purposes. In New York the decision in Consolidated Edison Company, Case 07-E-0523 the Commission disallowed the cash incentive compensation, commonly referred to as variable pay and the stock based plan costs. Even though the Company argued that both incentive plans should be allowed, using the standard argument that it is necessary to attract and retain employees and it compensates for achievement of good service, reliability and safety, the Commission did not find the request justified. In a recent filing in Washington D.C., Potomac Electric Power Company removed its incentive compensation from its request because it was in accordance with a previous decision. In Vermont, Green Mountain Power in Docket No. 5983 had incentive compensation totally disallowed because the goals did not provide an incentive that would require an improvement above goals that were previously achieved. Currently in Vermont it is common practice that portions of incentive compensation is automatically excluded when a filing is submitted by the company. In Connecticut the Department has determined that various levels of incentive compensation should be excluded from rates. In Arizona cash based incentive costs are shared between ratepayers and shareholders and stock based incentive compensation is generally excluded in its entirety. TR 1940.

The Company's request for $25,371,639 of incentive compensation expense and approximately $12,094,011 of long term incentive compensation expense should be disallowed in its entirety. The disallowance is based on the Company's failure to establish a plan that is designed to provide a tangible and/or quantifiable benefit to

ratepayers. As stated earlier, the design and the goals are a simple formula for paying added compensation. If PEF's management believes that attaining goals that do not encourage improvement is sufficient for payment of added compensation to its employees, then shareholders, not its ratepayers, should pay for the related compensation. The Commission should refuse to allow in rates this added compensation with dubious demonstrable benefits which will increase rates to customers who are already struggling to meet their own financial obligations in today's economy. People on fixed incomes, people who have lost their jobs and people who have made sacrifices so they can keep their jobs should not in good conscience be required to fund a better way of life for a Company that is insensitive to the current economic impact imposed on its customers just because the monopolistic environment in which it exists allows it to do so.

<u>ISSUE 67</u>: Should the Company's proposed 2010 allowance for employee benefit expense be adjusted?

<u>POSITION:</u> *Yes. Employee benefits expense should be reduced by $9,376, 809 to account for an unexplained discrepancy between the MFRs and the revised MFRs. Additionally, an adjustment needs to be made to be consistent with the adjustment in the level of employee due to vacant positions (See, Issue 65). *

ARGUMENT

Yes. OPC supports a two-fold adjustment to employee benefits with respect to the amount that the customers should bear. The OPC does not support any cuts in benefits actually provided. The only issue here is the amount that customers should

incur. As Mr. Schultz testifies a minimum, an adjustment is required based on the recommended adjustment to the Company's employee complement. To accomplish this he simply multiplied the average benefit expense per employee by his recommended reduction of 80 positions in the employee complement. The result is an adjustment of $1,946,206. TR 1941-1942. This adjustment was not rebutted by the company.

A second adjustment is supported based on a discrepancy between the initial filing and the revised filing another adjustment is required to account for a change reflected to MFR Schedule C-35. As shown on Exhibit 170 Schedule C-4, Mr. Schultz first reduced the $138,288,606 of expense reflected in the filing by $9,376,809 for the change in total fringe benefits reflected in the revised MFR Schedule C-35. This amount is by multiplying the expense ratio for fringe benefits provided in response to OPC Interrogatory No. 128 by the total fringe benefit cost on Revised MFR Schedule C-35. TR 1942. The company did not offer any rebuttal to this adjustment.

ISSUE 68: Should an adjustment be made to the accrual for property damage for the 2010 projected test year?

POSITION: *Yes. The accrual for storm damage should be eliminated. (See, Issue 33).*

ARGUMENT

See discussion under Issue 33.

ISSUE 69: Should an adjustment be made to PEF's 2010 generation O&M expense?

POSITION: *Yes. Power Operations Expense should be reduced $17,741,309 due to the lack of justification and documentation for the company's proposed increases in expense levels or due to the recurring nature of costs.*

ARGUMENT

The OPC is concerned that like other elements of PEF's filing the O&M expense in this very large category are excessive and may not be representative of going forward operations. On its face, the request appears excessive. As with the transmission and distribution submissions there was a limited amount of specifics regarding what the Company was including in the request. TR 1949.

Mr. Schultz notes that PEF witness Sorrick offers an explanation of the $53.1 million benchmark variance. The Company's request for Power Operations O&M expense is $175 million after excluding the payroll taxes, employee benefits and injuries and damages budgeted by the Power Operations cost center. The real budget total is $201 million. A very generic explanation of why the benchmark variance is $53.1 million does not constitute adequate justification for the $175 million identified by the Company's witness. A fallacy in the Company's case is that by selecting a number of projects that add up exactly to the amount of the overage, does not constitute justification or even true explanation of the reason for the overage. In answering questions about a rather absurd hypothetical, Mr. Sorrick nevertheless illustrated the problem with this approach. TR 2836-2838. The point of the exercise it that provide a

rote description of the activities that comprised an amount of dollars equal to the total dollars in excess of the O&M benchmark does not explain what might have increased in or been non-recurring in the remaining $122 million of the Power Operation O&M expense. Mr. Sorrick admitted that the activities that were listed in MFR C-41, totaling $53.1 million, were not intended to be comparisons to the same activities in the 2006 base year. TR 442-443. In this light, the "justification" that should be contained in MFR C-41 is nothing of the sort.

The Company's $175 million request has increased significantly when compared to the 2008 costs of approximately $138 million and the 2007 costs of approximately $127 million as shown on Company MFR Schedule C-6. TR. 403-412;435. Company testimony attempts to justify the increase by describing the various improvements in operations and efficiencies achieved. The problem is that the testimony does not provide an adequate explanation and it does not justify the cost increase requested. For example Mr. Sorrick discusses the improvement in Equivalent Forced Outage Rates (EFOR) for unit CR2. TR 383. A review of the response to OPC Interrogatory No. 248 indicates that in 2008 CR1, CR4 and CR5 EFOR increased. There are other increases also. Mr. Sorrick admitted on the stand that overhaul expense for planned and unplanned outages, projected to be $53 million in 2010, was more than double the amount of any of the previous 4 years, TR 434. There was no testimony whether the expense would stay at that level beyond the test year. In reviewing the response to OPC Interrogatory No. 247 it was observed that unit availability declined for a majority of the units in 2008. There is also discussion about costs savings and

efficiencies but no indication as to how and/or whether any savings are reflected. TR1950.

Because of this, the OPC recommends that the Commission reduce PEF's projected Test Year Power Operations Maintenance Expense by $17,741,309 on a jurisdictional basis, as shown on Exhibit 170 Schedule C-8. This adjustment is explained in Mr. Schultz's testimony as set out below.

First, the maintenance expense for power generation is projected to increase from $76.5 million in 2008 to $109.2 in 2010. After excluding company labor from the request, the maintenance is projected to increase $19 million (35.2%) from $54 million in 2008 to $73 million in 2010. Maintenance can fluctuate from year to year and basing the rate request on one high year is inappropriate. Therefore, some adjustment was required to smooth out the cost being passed onto ratepayers. Mr. Sorrick even tacitly acknowledged the correctness of this type of adjustment. TR 2818-2819. The Company's 2010 projected cost was adjusted for certain increases to smooth out the 2010 maintenance overload. TR 1950-1950.

Additionally, one cost driver of the increase is the adding of major Clean Air equipment at Crystal River Unit 4. Based on the response to OPC Interrogatories No. 260 and 263 there are two concerns with the $15.1 million of added cost in this project. The first concern is this type of work is typically performed every 9 years. The second concern is the cost increase appears to include $5.3 million for a precipitator and if that

response is correct, this a capital cost not an expense. Because the cost is not typical maintenance and will not be recurring, the cost for rate making purposes should be spread over at least 5 years. Spreading the $15.1 million over 5 years reduces the 2010 cost by $12 million. Despite criticism leveled at Mr. Schultz, these adjustments appear to be warranted based on the company's own witnesses concessions. TR 2811-2812.

Second, the Company was requested in OPC's Production of Document Request No. 213 to provide all supporting documentation that the company has for the $4.6 million cost estimate for 2010 under the Long Term Service Agreement discussed by Mr. Sorrick on page 26, of his pre-filed testimony. (Emphasis added) The Company response was, to see the response to OPC POD Question #1, MFR Schedule C-41, page 3 of 18. On the witness stand, Mr. Sorrick conceded that the discovery and MFR references were essentially circular and that the documentation referred to in OPC POD #1 was a document about 4000 pages long. TR 2821-2823. The MFR as indicated earlier provides a generic explanation for the increase over the benchmark and the explanation for the $4.6 million consisted of a paragraph that concludes by stating "We estimate the costs of that maintenance work covered by the LTSA to be approximately $4.6 million for the completion of two combustion inspections and two Balance of Plant outages." Another request was made for a more detailed explanation of the cost estimate in OPC Interrogatory No. 261. The response indicated that the inspection requirement included for the two units occurs every 12,500 hours. Assuming the unit operates 24-7 that would equate to an inspection every 6 years. Supporting documentation for a cost estimate is not a paragraph that says "we estimate the cost to

be this". Because the Company failed to provide supporting documentation for the requested expense the cost estimate of $4.6 million should be disallowed. Mr. Schultz recommends that only half of the cost be allowed in rates. This reduces the maintenance expense by $2.3 million.

Finally the Company was asked about the $14.7 million increase for existing fleet maintenance. OPC Interrogatory No. 264 asked the Company to identify the supporting documentation for the $14.7 million cost estimate and the response simply referred to the benchmark comparison explanation. Once again documentation for costs is not a paragraph but an invoice or cost quote. The response also provided a summary listing of the cost estimate. This estimate only provides further verification that what has occurred in the 2010 projections is an overloading of maintenance expense. The fact that 2010 is the projected test year for setting rates is not coincidental. The $14.7 million should be reduced $7.35 million to smooth out the costs for maintenance being charged to ratepayers. Without this smoothing, rates could be set artificially high and in future year's shareholders will benefit from the over-collection. As noted above, Mr. Sorrick even tacitly acknowledged the correctness of this type of adjustment. TR 2818-2819.

<u>ISSUE 70</u>: Should an adjustment be made to PEF's 2010 transmission O&M expense?

<u>POSITION:</u> *Yes. Transmission vegetative management expenses should be reduced $1,717,043 due to the lack of justification for the increase over historical levels.

Further, transmission bonding and grounding expense should be reduced $338,145 due to account for the fact that the proposed 2010 expense does not reflect that the cost is not incurred on an annual basis.*

ARGUMENT

OPC witness Schultz testifies to a general concern with the significant increase in the budgeted dollars in the transmission area. Based on the Company's MFR C-4 the costs for transmission O&M between 2005 and 2008 ranged from $31.3 million in 2005 to $35.2 million in 2008. The 2009 budgeted cost is $35.1 million. In 2010, the projected test year, the costs spike upward by $10.3 million for a total of $45.3 million. TR 578-580. Budget information shows an increase of $1 million for a line bonding and grounding program, and there is an increase of $2.7 million for vegetative management. The OPC is concerned about the lack of going forward representativeness of these costs in light of the company's commitment to Wall Street to make annual sustainable productivity gains of 3-5% in O&M costs. Ex. 293, p. 24

As Mr. Schultz testifies the storm hardening initiative has been in effect since 2006. According to the response to OPC Interrogatory No. 238 the Company spent $6.3 million in 2006, $6.9 million in 2007, $5.9 million in 2008 and have budgeted $6.6 million for 2009. The projected test year 2010 is set at $9.3 million. TR The Company's requested increase is excessive when compared to the historical spending and the 2009 budget. If the Company was required by the Commission to perform an increased level of trimming that increase should have been reflected in the 2009 budget.

Without reflecting an increase in the 2009 budget, there is concern that need for an increase in trimming does not exist. The cost increase in 2010 is not justified.

Yes, an adjustment of $1,717,043 is recommended on a jurisdictional basis as shown on Exhibit 170, Schedule C-6. The adjustment assumes that vegetative maintenance will continue at the level the Company deemed appropriate over the period 2006-2009. The increase requested is not justified given the Company's historical spending level. TR 1946. The only justification provided for the increase is on MFR Schedule C-41; Page 8 where the Company simply states it is required to comply with FERC and Commission standards. The Company could not conclusively demonstrate that the historic spending and the budgeted 2009 spending level was insufficient to maintain compliance, so there is no justification for the increase. TR 1946. Given the company's commitments to investors to create 3-5% of annual sustainable efficiency and productivity gains in O&M costs beginning in 2010 and beyond, this lack of justification in light of the justification should not be accepted. TR 2557-2559; Ex293, p.24.

Mr. Schultz also recommends that the Commission make an adjustment of $338,145 ($500,000 x .67629) on a jurisdictional basis to reflect a more normalized level of expense for line bonding and grounding. The $1 million included in the projected test year is reduced to reflect the average of an every other year expense. It is not appropriate to overload the projected test year to increase rates. PEF witness Oliver

acknowledged that line bonding and grounding expenses are not historically incurred at that level. TR 592; 2899-2902.

ISSUE 71: Should an adjustment be made to PEF's 2010 distribution O&M expense?

POSITION: *Yes. Distribution vegetative management expense should be reduced $8,924,197 to account for PEF's deferral of 2009 expenses into the test year. The Company's proposed cost level is not representative of annual requirements to perform tree trimming and the adjustment accounts for that.*

ARGUMENT

Mr. Schultz recommends a reduction in expense of $8,924,197 on a jurisdictional basis, as shown on Exhibit 170 Schedule C-7, for Distribution Vegetation Management. This factors in the trimming of the 18,341 primary conductor miles over a five year period using the Company $5,538 cost per mile and adds an estimated $5 million for trimming and treatment of the remaining 7,297 miles that consists of secondary conductors.

The Company trimmed 3,419 miles in 2006, 4,303 miles in 2007 and 3,297 miles in 2008. Based on the response to OPC Interrogatory No. 272 the Company's projected expense for 2010 is based on trimming 5,080 miles. This suggests that the Company did not trim the required miles in the years 2006-2008 and may be making up for the shortfall in the year rates are being set. PEF witness Joyner acknowledged that the expense "could decline after 2010." TR 3089. Based on the response to OPC

Interrogatory No. 270 the Company's 2009 budget is comparable to the amount expended in 2007. TR 677. The OPC is concerned that the significant increase in 2010 over 2009 further suggests that costs are being deferred to the projected test year. Limiting maintenance in previous years, for whatever reason, is not justification for passing the catch up costs on to ratepayers. As Mr. Schultz testifies, the amount allowed in rates should be based on the annual requirement to trim the primary conductor miles of line. Furthermore, it would be inappropriate to defer costs properly attributable to 2009 since that period is covered by a revenue sharing mechanism that assumes that earnings are fairly presented for surveillance purposes. TR 1947-1948.

ISSUE 73: What is the appropriate amount and amortization period for PEF's rate case expense for the 2010 projected test year?

POSITION: *Rate case expense should be reduced by $989,618 and the amount included in rate base should be reduced at least $2,787,000.*

ISSUE 75: What adjustments, if any, should be made to the 2010 projected test year depreciation expense to reflect revised depreciation rates, capital recovery schedules, and amortization schedules resulting from PEF's depreciation study?

POSITION: *Depreciation expense requested by PEF should be reduced by $113,112,961.*

ARGUMENT

See Discussion on Issues 8-16.

ISSUE 76: What is the appropriate amount of depreciation and fossil dismantlement expense for the 2010 projected test year?

POSITION: *The appropriate depreciation expense for PEF for 2010 is $322,500.632. OPC's position on the level of fossil dismantlement expense is reflected in Issue 19.*

ISSUE 83: Is PEF's requested level of Operating Expenses in the amount of $1,249,372,000 for the 2010 projected test year appropriate?

POSITION: *No.*

ISSUE 84: Is PEF's projected net operating income in the amount of $268,546,000 for the 2010 projected test year appropriate?

POSITION: *No.*

ISSUE 85: Has PEF appropriately accounted for affiliated transactions? If not, what adjustment, if any, should be made?

POSITION: * No. The commission should make two general adjustments to account for PEF's failure to protect retail ratepayers from non jurisdictional transactions.

Excessive profitability (return on investment) of affiliated non-regulated operations indicates that PEF is not fairly allocating costs to these operations. All related costs and revenues of the operations should be treated above the line for ratemaking. This would increase net operating income by $8.6 million. In order to properly allocate administrative and general and general plant to the City of Tallahassee's interest in the Crystal River nuclear plant, the Commission should reduce plant and associated accumulated depreciation and property taxes for a net plant reduction of at least $1.8 million. Retail test year A&G expense should be reduced by $6.3 million. *

ARGUMENT

OPC notes as a preliminary matter that PEF did not offer any testimony or evidence in rebuttal to OPC witness Dismukes on this issue.

1) Under-allocation of expenses to non-regulated operations.

PEF offers over 20 different products and services that are not regulated by the Commission. TR 2251, Ex. 151. These services produced revenue of over $20 million annually during 2007 and 2008 and are projected to produce $21.5 and $22.5 million in 2009 and 2010. Ex. 151. The majority of these revenues come from HomeWire [2] and surge protection[3] services provided to PEF's regulated customers. TR 2256.

All nonregulated services are provided by PEF, but the revenue and some, but not all costs are recorded below-the-line for ratemaking purposes. TR 2250. Because the nonregulated operations' profits are recorded below-the- line for ratemaking purposes, there is an incentive to shift costs to the regulated operations which will yield higher profits for PEF and its parent company, Progress Energy, Inc. TR 2250-51. In addition, PEF's nonregulated operations receive numerous benefits of being associated with the Company's regulated operations and these benefits are provided at no cost to the nonregulated operations. These benefits include the use of Progress Energy's name, logo, reputation, goodwill, and corporate image; being associated with a large, financially strong, well-entrenched electric company; use of Progress Energy's

[2] HomeWire protects inside wire, breakers, outlets and switches, and meter can repairs. Ex. 147
[3] Surge Protection guards against increases in electrical energy that can pass through interior wiring. Ex. 147

personnel; and use of Progress Energy's facilities. TR 2260. The affiliation between the Company's regulated and nonregulated operations requires that the Commission closely examine the relationship and the revenue and costs to ensure that ratepayers do not subsidize the nonregulated operations.

The Company failed to provide any evidence demonstrating that costs have been properly assigned or allocated to its nonregulated operations. There is no discussion in the Company's cost allocation manual how costs allocated or assigned to the nonregulated operations were treated. TR 2260. No detail was provided on the types of expenses charged to the nonregulated operations. TR 2258. The only evidence on this subject was offered by Ms. Dismukes who testified that there are common overhead costs which have not been assigned to the nonregulated operations.[4] TR 2259. The Company offered no testimony refuting any conclusions or facts addressed Ms. Dismukes.

Because the Company failed to provide detailed expense data, Ms. Dismukes examined the rate of return earned by PEF's nonregulated operations. This examination showed that the return on nonregulated investment was 109% in 2007 and 131% in 2008 and projected to be 188% in 2009 and 212% in 2010. TR 2261, Ex. 151. Ms. Dismukes' testimony that "such high returns on investment are abnormal and strongly

[4] While some governance costs were assigned to the nonregulated operations, these costs do not include normal administrative and general expenses consisting of: Administrative and General Salaries, Office Supplies and Expense, Outside Services, Property Insurance, Injuries and Damages, Employee Pensions and Benefits, Franchise Requirements, Regulatory Commission Expenses, General Advertising Expenses, Miscellaneous General Expenses, and Rents. TR 2259.

suggests that the costs attributed to the nonregulated operations are seriously understated" was unrebutted. TR 2261.

Ms. Dismukes' unrebutted and unchallenged testimony demonstrates that the Company failed to properly allocate common overhead costs to its nonregulated operations. Consequently, the Commission must adopt Ms. Dismukes' recommendations and treat these revenues, expenses, and investment above-the-line for ratemaking purposes. This recommendation increases test year revenue by $8,645,724. Ex. 151.

In addition, OPC recommends that the Commission open an investigation into the Company's cost allocations, direct assignment methodology, time recording, accounting, recording keeping, and marketing activities related to its nonregulated operations. The Commission should thoroughly examine the relationship between PEF's regulated and nonregulated operations and develop the necessary safeguards to protect customers from subsidizing the nonregulated operations.

2) Direct Assignment of Costs to the Wholesale Jurisdiction.

As part of its jurisdictional cost allocation study the Company directly assigned certain costs to its wholesale operations in connection with its Crystal River Unit 3. The Company failed to provide any detailed explanation of these costs were directly assigned to PEF's wholesale operations. TR 2263.

Ms. Dismukes conducted a thorough analysis of the Company's methodology to assign costs to Crystal River Unit 3. Ms. Dismukes analysis showed that the Company failed to properly allocate administrative and general expenses and general plant to Crystal River Unit 3. TR 2264. Ms. Dismukes presented the only credible testimony addressing how these errors should be corrected.

To overcome the Company's failure to allocate general plant to the Directly Assigned Wholesale operations (i.e. Crystal River Unit 3), she recommended using the Directly Assigned Wholesale percentage of total production, transmission and distribution plant to the total company production, transmission, and distribution plant. TR 2265. The Commission must adopt the recommendations of Ms. Dismukes to ensure that regulated jurisdictional customers do not bear costs which should have been attributed to Crystal River Unit 3. Correcting for the Company's failure reduces the general plant allocated to retail operations by $2,312,237. Correspondingly, accumulated depreciation allocated to retail operations would decrease by $562,236, resulting in a reduction of total net plant allocated to retail operations of $1,750,151. TR 2265, Ex. 152. Ms. Dismukes also agreed with staff that perhaps a better methodology to allocate the accumulated depreciation more accurately is as described in her deposition at pp. 61-63. Ex. 287. The fallout impact of this adjustment can be determined based on Exhibits 152 and 287.

To correct for the Company's deficiency in allocating administrative and general expenses, Ms. Dismukes recommended that that these expenses be allocated using

Directly Assigned Wholesale operations (i.e. Crystal River Unit 3), percentage of production, transmission, and distribution expenses to the total company production, transmission, and distribution expenses. TR 2265. Using this methodology reduces retail test year administrative and general expenses by $6,278,578. TR 2266, Ex. 152. Similarly, property taxes expense should be reduced by $21,431, and depreciation expense should be reduced by $68,887. TR 2266, Ex. 152.

<u>ISSUE 87</u>: Is PEF's requested annual operating revenue increase of $499,997,000 for the 2010 projected test year appropriate?

<u>POSITION:</u> *No. Required annual operating revenues for the 2010 projected test year are ($35,038,000). PEF's retail rates should be reduced to reflect this. *

ARGUMENT

This is a fallout issue. OPC is not advocating a rate reduction for the sake of a rate reduction. The adjustments presented fairly result in a rate reduction of ($35,038,000)

<u>ISSUE 115</u>: What is the appropriate effective date for PEF's revised rates and charges?

<u>POSITION:</u> *The appropriate effective date for any change in rates as a result of this docket is January 1, 2010. No customers should experience a rate change for any usage prior to January 1, 2010.*

ISSUE 116: Should any of the $13,078,000 interim rate increase granted by Order No. PSC-09-0413-PCO-EI be refunded to the ratepayers?

POSITION: *Yes. The increase was not lawfully granted and should be refunded with interest as determined by commission rule.*

ARGUMENT

By Order No. PSC-09-0413-PCO-EI, PEF received an interim rate increase of $13.1 million (on an annual basis). This request was based on, and granted on, an erroneous belief that the Stipulation approved in Docket No. 050078-EI ("Stipulation"); Order No. PSC-05-0945-S-EI ("Order") has created an ROE floor of 10% for purposes of determining interim relief under a "make-whole" concept. This interpretation is contrary to the plain meaning of the Stipulation and the revenue sharing mechanism that it established. PEF specifically requested that interim relief be granted pursuant to s. 366.071, Fla. Stat. This relief is not available to the Company.

The stipulation clearly prohibits the awarding of interim relief during the term of the stipulation. In relevant part, it states:

> 7. If PEF's retail base rate earnings fall below a 10% return on equity as reported on a Commission adjusted or pro-forma basis on a PEF monthly earnings surveillance report during the term of the Agreement, PEF may petition the Commission to amend its base rates notwithstanding the provisions of Section 4[5], either as a general rate proceeding or as a limited proceeding under Section 366.076, F.S. The Parties to this Agreement are not precluded from participating in such a proceeding, and, in the event PEF petitions to initiate a limited proceeding under this Section, any Party may petition to initiate any proceeding otherwise permitted by Florida

[5] This paragraph relates to prohibitions on changing the Stipulation, allowing PEF to make rate decreases, containing certain time limitations on others seeking reductions, and prohibiting PEF from converting traditional base rate costs to surcharge recovery (Footnote added)

> Law. This Agreement shall terminate upon the effective date of any Final Order issued in such a proceeding that changes PEF's base rates under this Section. This Section shall not be construed to bar or limit PEF from any recovery of costs otherwise contemplated by this Agreement.
>
> ***
>
> 14. Effective on the Implementation date, PEF will not have an authorized return on equity range for purposes of addressing earnings levels, and the revenue sharing mechanism described herein shall be the appropriate and exclusive mechanism to address earnings levels. However for purposes other than reporting or assessing earnings, such as cost recovery clauses and Allowance for Funds Used During Construction ("AFUDC"), PEF will use 11.75% as its authorized return.

In its order accepting and approving the Stipulation, the Commission unequivocally recognized that for the duration of the Stipulation:

> PEF will continue to operate without an authorized return on equity (ROE) ***range*** for the purpose of addressing earnings levels. The Stipulation's sharing mechanism will be ***the*** mechanism to address earnings levels.

Order at 3. [Emphasis added].

The language in the Stipulation and the Commission's expression of the basis of its understanding of the Stipulation in the Order could not be clearer. PEF has no authorized ROE range. There is no express or implied authorization for PEF to receive interim rates. The 10% figure in paragraph 7 serves only as a trigger, authorizing the Company to seek a change in its base rates when its achieved ROE falls below that level.

As there is no specific mention of interim rates entitlement in the stipulation, the Commission looked to the interim statute for guidance. Section 366.071, Fla. Stat., would provide the basis for interim relief were any to be allowed. This is a specialized mechanism that allows the fairly expeditious, lawful collection of increased rates from customers without providing them an opportunity for a hearing. It is also a mechanism that the Commission has expressly held is only available for a full base rates proceeding. See, *In Re: Petition for authority to recover prudently incurred storm restoration costs related to 2004 storm season that exceed storm reserve balance, by Florida Power & Light Company (FPL Storm Case)*, Order No. PSC-05-0187-PCO-EI, Issued February 17, 2005 in Docket No. 041291-EI, Order at 10). The interim statute provides in relevant part:

> (1) The commission may, during any proceeding for a change of rates, upon its own motion, or upon petition from any party, or by a tariff filing of a public utility, authorize the collection of interim rates until the effective date of the final order. Such interim rates may be based upon a test period different from the test period used in the request for permanent rate relief. ***To establish a prima facie entitlement for interim relief, the commission, the petitioning party, or the public utility shall demonstrate that the public utility is earning outside the range of reasonableness on rate of return calculated in accordance with subsection (5).***
>
> ***
>
> (5)(a) In setting interim rates or setting revenues subject to refund, the commission shall determine the revenue deficiency or excess by calculating the difference between the achieved rate of return of a public utility and its required rate of return applied to an average investment rate base or an end-of-period investment rate base.
>
> (b) For purposes of this subsection:

> 1. "Achieved rate of return" means the rate of return earned by the public utility for the most recent 12-month period. The achieved rate of return shall be calculated by applying appropriate adjustments consistent with those which were used in the most recent individual rate proceeding of the public utility and annualizing any rate changes occurring during such period.
>
> 2. "Required rate of return" shall be calculated as the weighted average cost of capital for the most recent 12-month period, using the last authorized rate of return on equity of the public utility, the current embedded cost of fixed-rate capital, the actual cost of short-term debt, the actual cost of variable-cost debt, and the actual cost of other sources of capital which were used in the last individual rate proceeding of the public utility.
>
> 3. ***In a proceeding for an interim increase, the term "last authorized rate of return on equity" used in subparagraph 2. means the minimum of the range of the last authorized rate of return on equity established in the most recent individual rate proceeding of the public utility.*** In a proceeding for an interim decrease, the term "last authorized rate of return on equity" used in subparagraph 2. means the maximum of the range of the last authorized rate of return on equity established in the most recent individual rate proceeding of the public utility. ***The last authorized return on equity for purposes of this subsection shall be established only: in the most recent rate case of the utility; in a limited scope proceeding for the individual utility; or by voluntary stipulation of the utility approved by the commission.***

[Emphasis added.]

Nevertheless, without regard to this unambiguous language in the Stipulation and the statute, PEF has sought and received interim relief based upon something it creatively refers to as "... the Company's last authorized minimum return on equity..." No amount of artful drafting can convert the language in paragraph 7 of the Stipulation into the statutorily required language: "minimum of the range of the last authorized rate of return." PEF cannot lawfully invoke the interim rates statute because PEF does not have an authorized rate of return. Any reinterpretation would fundamentally alter the basis

under which the customer parties were induced to sign the Stipulation. The words in the statute are a term of art. Intervenors were entitled to rely upon them. The commission should reject this *post hoc* rewrite and protect the integrity of the settlement process.

The interim statute requires that the formula be followed exactly. The Commission's 2005 order recognizes that the Stipulation did not provide for an interim mechanism. Inasmuch as the agreement provided revenue sharing as the exclusive method for dealing with earnings, there was no reason to have an ROE range. Interim relief as provided for in the statute is nothing if not a pure earnings test. The statutory formula only concerns the subject of "addressing earnings levels." Since revenue sharing precludes the utilization of an achieved rate of return comparison encompassed in the strict formula of Section 366.071, Fla. Stat., there is no basis for the interim relief found in the statute. There is no "make whole" concept allowable under a revenue sharing mechanism. For 2009, PEF has no authorized ROE. It has no authorized ROE range. It certainly does not have a so-called "last authorized minimum return on equity" – which itself is a statutory nullity.

The Commission and PEF has apparently also overlooked the plain language of order No. PSC-05-0478-FOF-EI at 13, where the Commission interprets very similar language from the 2002 stipulation and states in allowing the storm surcharge in the face of the 10% trigger, revenue sharing mechanism and lack of an ROE floor:

> We find that it is not appropriate to apply the 10% ROE threshold in the manner advocated by the intervenors. While Section 7 of the Stipulation specifies that PEF may petition for a rate increase only in the event its base rate earnings fall below a 10% ROE, the Stipulation is silent with respect to what return level the Company may be brought back to as a

> result of its requested rate relief. Moreover, Section 3 of the Stipulation states that "[e]ffective on the Implementation Date, FPC will no longer have an authorized Return on Equity (ROE) range for the purpose of addressing earnings levels, and the revenue sharing mechanism herein described will be the appropriate and exclusive mechanism to address earnings levels." Because PEF does not have an ROE range during the term of the Stipulation, the Company is arguably within its right to petition for recovery of all reasonable and prudently incurred storm-related costs to maintain the return it was otherwise entitled to earn.

Therein the Commission granted a $232 million rate increase by stating that there was no floor available to the Intervenors that would limit the level of the increase. In other words, there was a no make-whole entitlement to the Company. This precedent does not support the allowance of any interim relief related to a rate case that is filed outside of the bounds of the stipulation.

It should be noted that the Company alleges as part of its interim request that it projects its achieved ROE will fall below 7% for 2009. This allegation is followed with this statement:

> Accordingly, PEF needs this interim relief, and PEF further needs the limited base rate relief requested in its limited proceeding petition, and the accounting and cost adjustments requested in its petition for approval of the deferral of pension expenses and the ability to charge storm hardening initiative expenses to the storm damage reserve, in order to move closer to the 10% floor set forth in the Stipulation and Settlement approved by the Commission.

Base Rate Petition at 4-5.

OPC strongly objects to any relief being granted on this basis. First, it seeks to introduce allegations into the consideration for interim relief which are not legally cognizable as discussed, *supra*. Second, and more of a concern, is to the extent that PEF seeks interim and limited consideration of earnings relating to 2009, it violates paragraph 17 of the Stipulation which bars any party from seeking an outcome in conflict with the Stipulation.

The bottom line with respect to interim rate relief is that PEF has woven together a tenuous series of requests revolving around the incorrect notion that it has a 10% earnings ***floor*** for 2009. PEF has materially mischaracterized the 10% value – it is only a triggering mechanism relative to PEF's ability to ask for relief; it is not in any sense a floor or a minimum ROE to which PEF has any entitlement whatsoever for determining revenue requirements or setting rates. Once this fallacious premise is removed, the house of cards upon which it is built upon must fall. Any notion of entitlement to interim relief should be rejected. Likewise, the tariffs filed seeking an interim rate increase of $13.1 million should also be finally denied and any interim relief granted should be refunded to customers with interest.

While the OPC vigorously disputes the application of the interim statute (Section 366.071, Florida Statutes) to PEF for any interim rate relief for a period covered under the stipulation, assuming, *arguendo*, that it applies, calculation of interim revenue requirements requires a refund of interim rates granted. If the Commission disallows the phantom PPA equity adjustment pursuant to Issue 41, then an adjustment

must be made to the revenue requirement calculation made in Order No. PSC-09-0413-PCO-EI.

The issue is simple and straightforward. The 2005 stipulation provided that PEF could seek rate relief for a covered year through either general or limited relief if the company's achieved ROE fell below 10% as reported on the company's surveillance report. The stipulation further provided that the company could include the PPA related equity in the capital structure for surveillance report purposes but makes no mention of allowing its use for setting interim rates. TR 1706; Ex. 129. Consistent with the nature of the 10% figure being solely a trigger for rate relief as specified in the stipulation, the inclusion of the PPA phantom equity served merely to measure the company's *eligibility* to seek relief. The phantom equity was not allowed for – nor could it be a basis for – determining revenue requirements or setting rates.

PEF witness Toomey acknowledged that the phantom equity was included in the calculation of a mythical ROE floor. TR 1700-1702. The OPC has made a calculation based on the record and it shows that the company did not incur a revenue deficiency even using the unlawful and hypothetical 10% ROE floor. Based on the methodology identified by Mr. Toomey, (TR 1697-1702; 1762-1764), the revenue requirement associated with including the adjustment in the calculation is $17.8 million. See Attachment A. The interim revenue deficiency identified by the commission was $13.1 million. By mathematical deduction the interim rates should refunded entirely since without the phantom equity, there is no revenue deficiency for 2009.

ISSUE 119: Does the creation of a regulatory asset and the deferral of pension expenses from a period covered by the Stipulation approved by Order No. PSC-05-0945-S-EI to a future period violate the terms of the Stipulation and order?

POSITION: *Yes.*

ARGUMENT

PEF has sought relief as reflected in Proposed Agency Action Order No. PSC-09-0484-PAA-EI, based upon a faulty premise. First, the Stipulation makes it clear that the revenue sharing mechanism is ***the*** exclusive means of addressing earnings through the end of 2009. Secondly, as discussed in issue 118, above, there is not an interim mechanism available for PEF in this case. What is more, there is no right, obligation, opportunity, or other device available for PEF to have its achieved earnings be artificially pegged to at least 10% ROE for 2009. This ironclad aspect of the Stipulation is especially compelling where PEF seeks to carry forward "debits" for consideration and recovery into the post-January 1, 2010 earnings-based process that it expressly bargained away for the year 2009.

Fundamentally, PEF's request to defer any level of pension expense that would otherwise be recorded in a year covered by the 2005 Stipulation (2008 & 2009) violates the principle of retroactive ratemaking. That is, the actual $23.3 million of negative pension expense in 2008 would be added to a positive pension expense projected for 2009 of $33.9 million in order to increase pension expense in 2010. This clearly violates the ratemaking principle of attempting to recover past expenses or revenues in future rates. This is a violation of Commission ratemaking principles. See, *In Re: United Water*

Florida, Inc., Order No. PSC-98-1243-FOF-WS, Issued in Docket No. 971596-WS. (Attempted deferral to future period of post retirement benefits costs that were unrecovered due to insufficient earnings denied as violative of prohibition against retroactive ratemaking; retroactive ratemaking occurs when attempt is made to recover past losses in prospective rates), citing *City of Miami v. Florida Public Service Commission*, 208 So.2d 249,259 (Fla. 1968). Additionally, the Florida Supreme court has consistently ruled that such actions are unlawful inasmuch as they attempt to recover past costs in future rates. *City of Miami; Gulf Power Co. v. Cresse*, 410 So.2d 492, (FLA. 1982); *Meadowbrook Utility Systems, Inc. v. Florida Public Service Commission*, 518 So.2d, 326 (Fla. 1987); *Citizens of the State of Florida v. Florida Public Service Commission*, 448 So.2d 1024 (Fla. 1982)

When the Public Counsel and other parties entered into the Stipulation in 2005 they reasonably relied on the principle that rates would be frozen for the period covered by the Stipulation. PEF's proposal violates the Stipulation by taking certain costs which pertain to the period under which rates were frozen (and for which all parties rightfully assumed that cost recovery would come from the revenues that were shared) and then moving those costs out of that period into a future period.

If the Commission allows PEF to violate the Stipulation by allowing these costs to be moved out of the stipulated period into a future rate period, then the sanctity of any future Stipulation would be brought into doubt. PEF's proposal amounts to a form of double recovery since the expenses incurred during the operational timeframe of the

revenue sharing mechanism are presumed to be recovered under that plan. Allowing them to be deferred and recovered in rates set for 2010 forward will allow PEF to effectively recover them again. In any event, such treatment constitutes an impermissible modification of the Stipulation and should be rejected.

Additionally, during the hearing in this case, PEF witness Toomey testified that the significant increase in pension expense of $30.9 million in the test year may well be overstated. However, due to the deferral of pension costs that rightfully reside in 2009, the company proposes to first apply any reduction in pension expense to offset the cost that was deferred. TR 1826. Only after this exchange did OPC realize that the impact of the company's request does have a material impact on the rates customers will pay. Because of this decision to defer cost from a covered period of the stipulation, customers will be unable to rely on the Commission make any downward adjustment to the probably overstated test year pension expense in a way that will reduce customer rates. (See Toomey testimony generally at TR 1725-1737; 1820-1834). The impact of the Commission's allowance of the pension cost deferral as discussed in Order No. PSC-09-0484-PAA-EI at 9:

> Finally, we acknowledge the Company's claim that it is not seeking a change in rates associated with the 2009 pension expense. While the MFRs filed in Docket No. 090079-EI in support of its rate case reflect an annual pension expense of $27.1 million for the 2010 projected test year, PEF has not included any recognition of the 2009 pension expense in its filing. *Moreover, PEF has represented that it will use any pension expense levels below the allowance provided for in rates in the 2010 base rate proceeding in Docket No. 090079-EI to write-down the 2009 Pension Regulatory Asset.* In the event such write-downs are insufficient to fully amortize the 2009 Pension Regulatory Asset, PEF shall not seek recovery of this item through a base rate case prior to 2015. Until that time, the

> unamortized balance of the 2009 Pension Regulatory Asset shall be included in rate base for purposes of Earnings Surveillance Reporting. PEF has also represented that it will not earn a carrying charge on this regulatory asset.

[Emphasis Added].

OPC submits that this is unjust and contrary to the plain language and intent of the stipulation. The Commission should finally deny PEF's request to defer the 2009 pension costs and on its own motion adjust pension expense in setting customers rates to a more appropriate level based on current market conditions.

ISSUE 120: Does the creation of a regulatory asset and the deferral of pension expenses from a period covered by the Stipulation and order to a future period constitute retroactive ratemaking?

POSITION: *Yes *

ARGUMENT

See discussion under Issue 119.

ISSUE 121: Does the creation of a regulatory asset and the deferral of pension expenses from a period covered by the revenue sharing provisions of the Stipulation and order to a future period result in double recovery of those expenses?

POSITION: *Yes.*

ARGUMENT

See discussion under Issue 119.

Respectfully submitted,

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Description	Jurisdictional Adjusted Per Company Filing	Add Revenue Increase Requested	Adjusted Earnings for Requested Increase	Add back Earnings For Imputed Equity	Adjusted Earnings If Imputed Equity Allowed
Total Operating Revenues	$1,509,250	$13,078	$1,522,328	$ 17,827	$1,540,155
Total Operating Expenses	$1,117,764	$5,077	$1,122,841	$ 6,921	$1,129,761
Net Operating Income	$391,486	$8,001	$ 399,487	$ 10,907	$ 410,394
Requested Jurisdictional Rate Base	$5,098,765		$5,098,765		$5,098,765
Achieved Rate of Return on Rate Base	7.68%		7.83%		8.05%
Requested Cost of Capital	7.83%		7.83%		7.83%
Difference in Cost of Capital					0.214%
Equity Ratio					45.01%
ROE Achieved with Imputation on Actual Capital Structure if Imputation Not Allowed					10.95%

Source: MFR Schedules G-1, G-8, G-19a,

FLORIDA PUBLIC SERVICE COMMISSION

COMPANY: PROGRESS ENERGY FLORIDA INC.

DOCKET NO. 090079-EI

Interim Test Year Ended12/31/2008

Line No.	(A) (1) DESCRIPTION	(B) (2) SOURCE		(C) Company Amount Per Filing ($000)	(D) Company Amount Without Imputed Equity ($000)
1	JURISDICTIONAL ADJUSTED RATE BASE	SCHEDULE B-1	$	5,098,765	5,098,765
2	RATE OF RETURN ON RATE BASE	SCHEDULE D-1A	x	7.835%	7.62%
3	JURISDICTIONAL NET OPERATING INCOME REQUESTED	LINE 1 X LINE 2	$	399,488	388,580
4	JURISDICTIONAL ADJUSTED NET OPERATING INCOME	SCHEDULE C-1		391,486	391,486
5	NET OPERATING INCOME DEFICIENCY (EXCESS)	LINE 3 - LINE 4	$	(8,002)	2,906
6	EARNED RATE OF RETURN	LINE 4 / LINE 1		7.68%	7.68%
7	NET OPERATING INCOME MULTIPLIER	SCHEDULE C-44	x	1.63430	1.63430
8	REVENUE INCREASE (DECREASE) REQUESTED	LINE 5 X LINE 7	$	13,078	(4,749)
	Revenue Impact of Imputation of Equity for PPAs				17,827
	Taxes (1-61.21% from Schedule C-44 in MFRs)	38.82%			(6,921)
	Net Income				10,907

SOURCE: SCHEDULE D - 1A
FLORIDA PUBLIC SERVICE COMMISSION
COMPANY: PROGRESS ENERGY FLORIDA INC.
DOCKET NO. 090079-EI

COST OF CAPITAL - 13-MONTH AVERAGE
(Thousands)

Interim Test Year 12/31/08

Line No.	Class of Capital	(A) Co Total	(B) Specific Adjustments	(C) Pro Rata Adjustments	(D) System Adjusted	(E) Jurisdictional Factor	(F) Jurisdictional Capital Structure	(G) Ratio	(H) Cost Rate	(I) Weighted Cost Rate
1	**With Imputation of PPA Debt**									
2	Common Equity	3,207,197	844,577	(718,576)	3,333,198	76.54%	2,551,230	50.04%	10.00%	5.0039%
3	Preferred Stock	33,497	-	(5,941)	27,556	76.54%	21,091	0.41%	4.51%	0.0187%
4	Long Term Debt-Fixed	3,506,938	(110,173)	(602,411)	2,794,354	76.54%	2,138,799	41.95%	6.27%	2.6303%
5	Short Term Debt	57,531	1,791	(10,521)	48,801	76.54%	37,352	0.73%	3.87%	0.028%
6	Customer Deposits Active	180,135	-	(31,947)	148,188	76.54%	113,423	2.22%	6.23%	0.139%
7	Customer Deposits Inactive	1,001	-	(177)	824	76.54%	631	0.01%	0.00%	0.000%
8	Investment Tax Credit Post '70 (Wdt Cost)	14,477	-	(2,567)	11,910	76.54%	9,116	0.18%	8.28%	0.015%
9	Deferred Income Taxes	442,296	32,524	(84,209)	390,611	76.54%	298,974	5.86%	0.00%	0.000%
10	FAS 109 DIT- Net	(114,638)	-	20,331	(94,307)	76.54%	(72,183)	-1.42%	0.00%	0.000%
11	Total	7,328,434	768,719	(1,436,018)	6,661,135		5,098,433	100.00%		7.835%

Line No.	Weighted Cost of ITCs	Jur. Capital Structure	Ratio	Cost Rate	Weighted Cost Rate		
12	Common Equity	2,551,230	53.73%	10.00%	5.373%	**Equity Ratio**	**53.73%**
13	Preferred Stock	21,091	0.44%	4.51%	0.020%		
14	Long Term Debt-Fixed	2,138,799	45.04%	6.27%	2.824%		
15	Short Term Debt	37,352	0.79%	3.87%	0.030%		
	Total Investor Sources of Capital	4,748,472	100.00%		8.25%		

Line No.	Class of Capital	(A) Co Total	(B) Specific Adjustments	(C) Pro Rata Adjustments	(D) System Adjusted	(E) Jurisdictional Factor	(F) Jurisdictional Capital Structure	(G) Ratio	(H) Cost Rate	(I) Weighted Cost Rate	Achieved ROE w Imp Allowed & Actual ER	
	Without Imputation of PPA Debt											
16	Common Equity	3,207,197	103,962	(289,708)	3,021,451	75.95%	2,294,792	45.01%	10.00%	4.5010%	10.95%	4.93%
17	Preferred Stock	33,497	-	(2,931)	30,566	75.95%	23,215	0.46%	4.51%	0.0205%		0.021%
18	Long Term Debt-Fixed	3,506,938	(110,173)	(297,199)	3,099,566	75.95%	2,354,121	46.17%	6.27%	2.8951%		2.895%
19	Short Term Debt	57,531	1,791	(5,190)	54,132	75.95%	41,113	0.81%	3.87%	0.031%		0.031%
20	Customer Deposits Active	180,135	-	(15,761)	164,374	75.95%	124,842	2.45%	6.23%	0.153%		0.153%
21	Customer Deposits Inactive	1,001	-	(88)	913	75.95%	694	0.01%	0.00%	0.000%		0.000%
22	Investment Tax Credit Post '70 (Wdt Cost)	14,477	-	(1,267)	13,210	75.95%	10,033	0.20%	10.53%	0.021%		0.021%
23	Deferred Income Taxes	442,296	32,524	(41,544)	433,276	75.95%	329,073	6.45%	0.00%	0.000%		0.000%
24	FAS 109 DIT- Net	(114,638)	-	10,030	(104,608)	75.95%	(79,450)	-1.56%	0.00%	0.000%		0.000%
25	Total	7,328,434	28,104	(643,657)	6,712,881		5,098,433	100.00%		7.62%		8.05%
				(643,657)	6,712,881	Rate Base	5098433					

Line No.	Weighted Cost of ITCs	Jur. Capital Structure	Ratio	Cost Rate	Weighted Cost Rate		
26	Common Equity	3,021,451	63.63%	10.00%	6.363%	**Equity Ratio**	**63.63%**
27	Preferred Stock	30,566	0.64%	4.51%	0.029%		
28	Long Term Debt-Fixed	3,099,566	65.28%	6.27%	4.093%		
29	Short Term Debt	54,132	1.14%	3.87%	0.044%		
	Total Investor Sources of Capital	6,205,715	130.69%		10.53%		

Line No.	**Without Imputation of PPA Debt (pro rata reconciliation adjustments)**					
16	Common Equity	3,207,197	103,962	3,311,159	45.01%	(289,708)
17	Preferred Stock	33,497	-	33,497	0.46%	(2,931)
18	Long Term Debt-Fixed	3,506,938	(110,173)	3,396,765	46.17%	(297,199)
19	Short Term Debt	57,531	1,791	59,322	0.81%	(5,190)
20	Customer Deposits Active	180,135	-	180,135	2.45%	(15,761)
21	Customer Deposits Inactive	1,001	-	1,001	0.01%	(88)
22	Investment Tax Credit Post '70 (Wdt Cost)	14,477	-	14,477	0.20%	(1,267)
23	Deferred Income Taxes	442,296	32,524	474,820	6.45%	(41,544)
24	FAS 109 DIT- Net	(114,638)	-	(114,638)	-1.56%	10,030
25	Total	7,328,434	28,104	7,356,538	100.00%	(643,657)

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and foregoing **CITIZENS' POST-HEARING STATEMENT OF POSITIONS AND POST-HEARING BRIEF** has been furnished by electronic mail and U.S. Mail on this 19th day of October, 2009, to the following:

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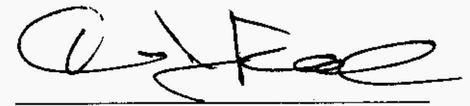

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