

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Nuclear cost recovery clause.

DOCKET NO. 110009-EI  
ORDER NO. PSC-11-0335-PHO-EI  
ISSUED: August 9, 2011

Pursuant to Notice and in accordance with Rule 28-106.209, Florida Administrative Code (F.A.C.), a Prehearing Conference was held on August 1, 2011, in Tallahassee, Florida, before Commissioner Ronald A. Brisé, as Prehearing Officer.

APPEARANCES:

JESSICA A. CANO, BRYAN S. ANDERSON and MITCHELL S. ROSS, ESQUIRES, Florida Power & Light Company, 700 Universe Boulevard, Juno Beach, FL 33408-0420

On behalf of Florida Power & Light Company (FPL).

JOHN T. BURNETT, ESQUIRE, Progress Energy Florida, 299 First Avenue, N. PEF-151, St. Petersburg, FL 33701; JAMES MICHAEL WALLS and BLAISE N. HUHTA, ESQUIRES, Carlton Fields, P.A., Post Office Box 3239, Tampa, FL 33601-3239

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

CHARLES J. REHWINKEL, JOSEPH A. MCGLOTHLIN, and ERIK L. SAYLER, ESQUIRES, Office of Public Counsel, c/o The Florida Legislature, 111 West Madison Street, Room 812, Tallahassee, Florida 32399-1400

On behalf of THE CITIZENS OF THE STATE OF FLORIDA (OPC).

GARY A. DAVIS and JAMES S. WHITLOCK, ESQUIRES, Gary A. Davis & Associates, 61 North Andrews Avenue, PO Box 649, Hot Springs, NC 28779; E. LEON JACOBS, JR., ESQUIRE, Williams & Jacobs, LLC, 1720 S. Gadsden Street, MS 14, Suite 201, Tallahassee, Florida 32301

On behalf of The Southern Alliance for Clean Energy (SACE).

VICKI GORDON KAUFMAN and JON MOYLE, JR., ESQUIRES, Keefe, Anchors, Gordon & Moyle, PA, 118 North Gadsden Street, Tallahassee, FL 32312

On behalf of the Florida Industrial Power Users Group (FIPUG).

JAMES W. BREW and F. ALVIN TAYLOR, ESQUIRES, Brickfield, Burchette, Ritts & Stone, P.C., 1025 Thomas Jefferson St., NW, Eighth Floor, West Tower, Washington, DC 20007

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

DOCUMENT NUMBER-DATE

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KAREN S. WHITE, ESQUIRE, c/o AFCESA-ULFSC, 139 Barnes Drive,  
Suite 1, Tyndall Air Force Base, Florida 32403  
On behalf of Federal Executive Agencies (FEA).

KEINO YOUNG and ANNA R. NORRIS, ESQUIRES, Florida Public Service  
Commission, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850  
On behalf of the Florida Public Service Commission (STAFF).

MARY ANNE HELTON, Deputy General Counsel, Florida Public Service  
Commission, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850  
Advisor to the Florida Public Service Commission.

### **PREHEARING ORDER**

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

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

Both Florida Power & Light Company (FPL) and Progress Energy Florida, Inc. (PEF) petitioned the Commission for recovery of costs through the Nuclear Cost Recovery Clause (NCRC) on March 1, 2011. This is the fourth year of this roll-over docket, which is set for hearing on August 10-12, 15-19, and 24-26, 2011. The Office of Public Counsel (OPC), the Florida Industrial Power Users Group (FIPUG), White Springs Agricultural Chemicals, Inc. d/b/a PCS Phosphate – White Springs (PCS-Phosphate), Southern Alliance for Clean Energy (SACE), and the Federal Executive Agencies (FEA) have each been granted intervention in this docket. On July 25, 2011, Prehearing Statements were filed by FPL, PEF, Staff, and all the intervenors.

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

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

#### **III. JURISDICTION**

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

IV. PROCEDURE FOR HANDLING CONFIDENTIAL INFORMATION

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

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

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

At the conclusion of that portion of the hearing that involves confidential information, all copies of confidential exhibits shall be returned to the proffering party. If a confidential exhibit has been admitted into evidence, the copy provided to the court reporter shall be retained in the Office of Commission Clerk's confidential files. If such material is admitted into the evidentiary record at hearing and is not otherwise subject to a request for confidential classification filed with the Commission, the source of the information must file a request for confidential classification of the information within 21 days of the conclusion of the hearing, as set forth in Rule 25-22.006(8)(b), F.A.C., if continued confidentiality of the information is to be maintained.

V. PREFILED TESTIMONY AND EXHIBITS; WITNESSES

Testimony of all witnesses to be sponsored by the parties (and Staff) has been prefiled and will be inserted into the record as though read after the witness has taken the stand and

affirmed the correctness of the testimony and associated exhibits. All testimony remains subject to timely and appropriate objections. Upon insertion of a witness's testimony, exhibits appended thereto may be marked for identification. Each witness will have the opportunity to orally summarize his or her testimony at the time he or she takes the stand. Summaries of testimony shall be limited to five minutes.

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

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

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

#### VI. ORDER OF WITNESSES

The order of witnesses will be as follows:

#### **FLORIDA POWER & LIGHT COMPANY**

| <u>Witness</u>        | <u>Proffered By</u> | <u>Issues #</u>   |
|-----------------------|---------------------|-------------------|
| <u>Direct</u>         |                     |                   |
| Steven D. Scroggs     | FPL                 | 2, 3, 3a, 4-9     |
| Nils Diaz             | FPL                 | 3A, 6             |
| Winnie Powers         | FPL                 | 1, 6-9, 11-14, 19 |
| Armando Olivera       | FPL                 | 15A               |
| John J. Reed          | FPL                 | 6, 7, 11, 12      |
| Terry O. Jones        | FPL                 | 10, 11-14, 15A    |
| William B. Derrickson | FPL                 | 11, 12            |

| <u>Witness</u>                | <u>Proffered By</u> | <u>Issues #</u>              |
|-------------------------------|---------------------|------------------------------|
| J.A. Stall                    | FPL                 | 15A                          |
| Stephen R. Sim                | FPL                 | 3, 10                        |
| Brian D. Smith                | OPC                 | 10                           |
| William R. Jacobs, Jr., Ph.D. | OPC                 | 10, 10B, 11, 15A, 16, 17, 18 |
| Lynn Fisher<br>David Rich     | Staff               | 6, 11                        |
| Kathy L. Welch                | Staff               | 6, 11                        |

Rebuttal

|                       |     |                  |
|-----------------------|-----|------------------|
| Armando Olivera       | FPL | 16               |
| Terry Deason          | FPL | 16-18, 10B       |
| John J. Reed          | FPL | 10B              |
| Winnie Powers         | FPL | 19               |
| William B. Derrickson | FPL | 11-13, 16        |
| Terry O. Jones        | FPL | 10B, 12, 13, 16  |
| J.A. Stall            | FPL | 15A, 16          |
| Steven R. Sim         | FPL | 10B, 15A, 16, 17 |

**PROGRESS ENERGY FLORIDA, INC.**

| <u>Witness</u> | <u>Proffered By</u> | <u>Issues #</u>               |
|----------------|---------------------|-------------------------------|
| <u>Direct</u>  |                     |                               |
| Will Garrett   | PEF                 | 24, 25, 32, 33                |
| Jon Franke     | PEF                 | 29, 31, 32, 33, 34, 35, 37, A |
| Sue Hardison   | PEF                 | 23, 24, 25, 27B, 28B          |

| <u>Witness</u>                    | <u>Proffered By</u> | <u>Issues #</u>               |
|-----------------------------------|---------------------|-------------------------------|
| Thomas G. Foster                  | PEF                 | 21, 27B, 28B, 34, 35, 36, 37  |
| John Elnitsky                     | PEF                 | 20-25, 27A, 27B, 28A, 28B, 36 |
| William R. Jacobs, Jr., Ph.D.     | OPC                 | 23, 27B, 36, 37               |
| William Coston<br>Kevin Carpenter | Staff               | 24, 32                        |
| Jeffery A. Small                  | Staff               | 24, 32                        |

Rebuttal

|                  |     |                                |
|------------------|-----|--------------------------------|
| Thomas G. Foster | PEF | 36                             |
| Jon Franke       | PEF | 31, 32, 33, 34                 |
| John Elnitsky    | PEF | 23, 25, 27A, 27B, 28A, 28B, 36 |

VII. BASIC POSITIONS

**FPL:** Section 403.519(4), Florida Statutes, Section 366.93, Florida Statutes, and Rule 25-6.0423, Florida Administrative Code (“the Rule”) establish the legal and regulatory framework for the recovery of costs in the development of nuclear generation in Florida. Section 403.519(4), Florida Statutes, applies to the determination of need for a nuclear-fueled power plant. This section emphasizes the Florida Legislature’s desire to improve fuel diversity, reduce dependence on fuel oil and natural gas, reduce air emission compliance costs, and contribute to the long-term stability and reliability of the electric grid in Florida; establishes the prudence standard that shall be applied in nuclear cost recovery proceedings; and makes clear that a utility is entitled to recover all prudently incurred costs. Specifically, the statute states that after a determination of need is granted, “the right of a utility to recover any costs incurred prior to commercial operation, including but not limited to costs associated with the siting, design, licensing, or construction of the plant...shall not be subject to challenge” unless a preponderance of the evidence supports a finding that “certain costs” were imprudently incurred. The statute further makes clear that (i) proceeding with the construction of the nuclear power plant following an order by the Commission approving the need for it “shall not constitute or be evidence of imprudence”; and (ii) “imprudence shall not include any cost increases due to events beyond the utility’s control.” *See* § 403.519(4)(e), Fla. Stat.

Section 366.93, Florida Statutes, requires the Commission to establish by rule a cost recovery framework that promotes utility investment in nuclear power plants and allows for the recovery of all prudently incurred preconstruction costs and the carrying costs on construction cost balances. It also entitles utilities to increase their base rates upon commercial operation of the nuclear power plant, requires annual reporting of budgeted and actual costs, and provides for cost recovery should the project be cancelled. *See* §366.93(4), (5), and (6), Fla. Stat., respectively. In response to this legislative direction, the Commission promulgated Rule 25-6.0423, Florida Administrative Code (“the Rule”). The stated purpose of the Rule is to establish an alternative cost recovery mechanism that promotes utility investment in nuclear power plants and allow for recovery of all prudently incurred costs. It also provides for the recovery of reasonable actual/estimated costs for the current year and reasonable projected costs for the following year.

FPL is currently undertaking two nuclear projects that qualify for cost recovery under the Nuclear Cost Recovery Clause (“NCRC”) process described above – the Extended Power Uprate project (“EPU” or “Uprate Project”) at its St. Lucie and Turkey Point plants, and the development of two new nuclear units, Turkey Point 6 & 7. Each project was granted an affirmative determination of need by the Commission pursuant to Section 403.519(4), Florida Statutes, and FPL is therefore entitled to recover all its prudent and reasonable costs. *See* Order No. PSC-08-0021-FOF-EI, issued January 7, 2008 (making an affirmative determination of need for FPL’s expedited EPU project) and Order No. PSC-08-0237-FOF-EI, issued April 11, 2008 (making an affirmative determination of need for Turkey Point 6 & 7). As required by the Rule, and as demonstrated in the testimony, exhibits, and Nuclear Filing Requirements (“NFRs”) filed in this docket, FPL’s expenditures in 2009 and 2010 on each of these projects were prudently incurred, and FPL’s actual/estimated 2011 expenditures and projected 2012 expenditures are reasonable. FPL has also demonstrated that its feasibility analyses for each project should be approved. No intervenor has demonstrated that a single dollar was imprudently incurred.

With respect to the Uprate Project, in 2009 and 2010, FPL prudently incurred necessary project costs related to the license application, engineering and design, permitting, project management, power block engineering and procurement, and non-power block engineering and procurement. Significant progress was made in 2009 and 2010 to advance this complex undertaking, with implementation activities occurring in 2010 and planned for 2011 and 2012. FPL’s 2009 and 2010 costs were prudently incurred, and its 2011 actual/estimated costs and 2012 projected costs are reasonable. All of FPL’s EPU costs are supported by overlapping project, budget, cost and schedule controls.

For Turkey Point 6 & 7, 2009 and 2010 pre-construction costs were necessarily and prudently incurred to continue with the licensing and permitting of the

project, for engineering and design, and for power block engineering and procurement. In 2011 and 2012, FPL has incurred and expects to incur licensing and permitting pre-construction costs to continue with the work necessary to obtain the licenses and permits that will allow for future construction. Throughout the development of Turkey Point 6 & 7, FPL has adhered to a deliberate, step-wise approach focused on maintaining the ability to move forward with the project, while fully recognizing and responding to industry and regulatory uncertainty. As a result, FPL has been able to make prudent and cost-effective decisions each step of the way. FPL's 2009 and 2010 costs were prudently incurred, and its 2011 actual/estimated costs and 2012 projected costs are reasonable. All of FPL's Turkey Point 6 & 7 costs are supported by overlapping project, budget, cost and schedule controls.

Using updated non-binding cost estimates, the Uprate Project and Turkey Point 6 & 7 both continue to be projected as solidly cost-effective for FPL's customers. FPL has updated the inputs to its long-term feasibility analyses and these analyses show that – assuming a wide range of potential fuel costs, a wide range of potential environmental compliance costs, and updated assumptions for the load forecast and capital costs among others – each of these projects are projected to be solidly cost-effective generation additions for FPL's customers. Indeed, the EPU project is cost-effective in seven out of seven different fuel cost and environmental compliance cost scenarios. Turkey Point 6 & 7 is cost-effective in six out of seven different fuel cost and environmental compliance cost scenarios, and is within the range of the non-binding cost estimate (i.e., the result is neutral) in the seventh scenario.

Each project is projected to provide substantial customer benefits. For example, assuming a Medium Fuel Cost and the “Environmental II” compliance cost scenario, the EPU project is projected to provide estimated fuel cost savings for FPL's customers of approximately \$139 million (nominal \$) in the first full year of operation; provide estimated fuel cost savings for FPL's customers over the life of the plant of approximately \$4.5 billion (nominal \$); diversify FPL's fuel sources by decreasing reliance on natural gas by 3% beginning in the first full year of operation; reduce annual fossil fuel usage by the equivalent of six million barrels of oil or 37 million mmBTU of natural gas; and reduce carbon dioxide (“CO<sub>2</sub>”) emissions by an estimated 28 million tons over the life of the plant.

Similarly, assuming the same fuel and environmental compliance cost scenario, Turkey Point 6 & 7 is projected to provide estimated fuel cost savings for FPL's customers of approximately \$1.07 billion (nominal \$) in the first full year of operation; provide estimated fuel cost savings for FPL's customers over the life of the plant of approximately \$75 billion (nominal \$); diversify FPL's fuel sources by decreasing reliance on natural gas by approximately 13% beginning in the first full year of operation; reduce annual fossil fuel usage by the equivalent of 28 million barrels of oil or 177 million mmBTU of natural gas; and reduce CO<sub>2</sub>



emissions by an estimated 287 million tons over the life of the plant, which is the equivalent of operating FPL's entire generating system with zero CO<sub>2</sub> emissions for 7 years.

For all the reasons discussed above, and as explained in more detail in the direct, supplemental, and rebuttal testimony provided by its witnesses, FPL's total requested NCRC amount of \$196,092,631 should be approved. For a typical residential customer consuming 1,000 kWh per month, this amount equates to an approximate monthly bill impact of \$2.09. FPL's request complies with the requirements of Section 366.93, Florida Statutes, complies with the Rule, and will enable the proper recovery of prudent costs incurred in the pursuit of additional nuclear generation for the benefit of FPL's customers.

**PEF:** CR3 Uprate Project.

The Crystal River 3 ("CR3") Extended Power Uprate Project ("CR3 Uprate") is a three-phase project involving the engineering, design, equipment procurement, and equipment installation necessary to generate an additional, estimated 180 MWe of efficient nuclear power at the Company's existing nuclear unit. PEF is currently performing the engineering and design analyses, and identifying and procuring the material and equipment, necessary to complete the third and final phase of the CR3 Uprate. This is called the Extended Power Uprate ("EPU") work phase because, upon completion of the EPU work and Nuclear Regulatory Commission ("NRC") approval of the Company's License Amendment Request ("LAR") for the power uprate, the Company will be able to increase the power generated by CR3. The joint owners of CR3 have indicated that they are electing to take their share of the additional uprate MWe, and contribute their share of the costs incurred to obtain these additional MWe. PEF expects the EPU phase of the CR3 Uprate project to be successfully completed and the LAR approved by the NRC.

Pursuant to Section 366.93, Florida Statutes, and Rule 25-6.0423, F.A.C., PEF filed a petition on March 1, 2011, requesting a determination of prudence for its CR3 Uprate 2009 project costs and 2009 project management, contracting, and oversight controls (deferred until this docket by Commission Order No. PSC-11-0095-FOF-EI, issued February 2, 2011). PEF's March 1<sup>st</sup> Petition also seeks the recovery of the carrying costs on its 2010 construction expenditures and a determination of the prudence of those costs, as well as a determination of the prudence of the Company's 2010 project management, contracting, accounting and cost oversight controls. PEF filed the testimony and exhibits of Mr. Franke and Mr. Garrett in support of the prudence of these costs and project management, contracting, accounting, and cost oversight controls.

PEF filed, on May 2, 2011, a petition, additional testimony, and Nuclear Filing Requirements ("NFR") schedules AE-1 through AE-7B and P-1 through P-8 and

Appendices, for years 2011 and 2012, respectively, in support of PEF's actual/estimated costs for 2011 and projected costs for 2012 and schedules TOR-1 through TOR-7, which reflect total project estimated costs. PEF also filed testimony and exhibits regarding the long-term feasibility of completing the CR3 Uprate project. On July 1, 2011, PEF filed its Motion for Deferral of the Approval of the Long-term Feasibility and the Reasonableness of Projected Construction Expenditures and Associated Carrying Costs for the Crystal River Unit 3 Uprate Project and Petition for Temporary Variance or Waiver of Rules 25-6.0423(5)(c)2, 5, F.A.C. on an Emergency Basis (hereinafter the "Motion and alternative Petition").<sup>1</sup> This Motion and alternative Petition seeks to defer the consideration of the long-term feasibility and the reasonableness of projected construction expenditures to the 2012 nuclear cost recovery clause ("NCRC") proceeding to include updated information in light of the second delamination event at CR3.

PEF developed and utilized reasonable and prudent project management policies and procedures to carry out the CR3 Uprate project. PEF requests that the Commission find that its project management, contracting and oversight controls for 2009 and 2010 were reasonable and prudent.

PEF also developed and utilized reasonable and prudent accounting and cost oversight controls. Pursuant to these policies, PEF submitted its actual 2009 and 2010 costs and developed and submitted its actual/estimated 2011 costs and projected 2012 costs. PEF therefore also requests that the Commission find that its accounting and cost oversight controls for 2009 and 2010 were reasonable and prudent.

PEF was permitted to recover its 2009 CR3 Uprate project costs when the Commission determined that they were reasonably incurred in the Commission's Order in the 2010 NCRC proceeding, deferring only the determination of the prudence of those costs. Because PEF's testimony and supporting exhibits in this docket demonstrate the prudence of those costs, PEF requests that the Commission approve the prudence of these 2009 costs, and authorize PEF to recover the revenue requirements associated with those costs. For the time period January 2009 through December 2009, PEF is requesting a total of \$15,510,412 in revenue requirements, adjusted for the contribution to construction expenditures made by the CR3 joint owners. PEF requests that the Commission approve the prudence of these 2009 costs.

PEF was permitted to recover its 2010 CR3 Uprate project costs when the Commission determined that they were reasonably incurred in the Commission's Order in the 2010 NCRC proceeding. Because PEF's testimony and supporting

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<sup>1</sup> On July 5, 2011, PEF filed a Notice of Filing Corrected Motion for Deferral to Correct Typographical Errors in Rule Citations with an attached Corrected Motion.

exhibits in this docket demonstrate the prudence of those costs, PEF requests that the Commission approve the prudence of the CR3 Uprate Project's 2010 costs, and authorize PEF to recover the revenue requirements associated with those costs. For the time period January 2010 through December 2010, PEF is requesting a total of \$8,028,381 in revenue requirements, adjusted for the contribution to construction expenditures made by the CR3 joint owners. PEF requests that the Commission approve the prudence of these 2010 costs.

For all these reasons, as more fully developed in PEF's pre-filed testimony and exhibits, including its NFR schedules, PEF requests that the Commission determine that the CR3 Uprate project's actual 2009 and 2010 costs were prudently incurred, and that the CR3 Uprate project's 2009 and 2010 project management, contracting and oversight controls were reasonable and prudent.

#### Levy Nuclear Project

Pursuant to Section 366.93, Florida Statutes, and Rule 25-6.0423, F.A.C., PEF filed a petition on March 1, 2011, for cost recovery of its Levy Nuclear Project ("LNP") costs. PEF filed NFR schedules, specifically Schedules T-1 through T-7B, in support of PEF's actual costs for 2010. In addition, PEF filed testimony regarding the LNP costs and the Company's project management policies and procedures. PEF then filed, on May 2, 2011, a petition, additional testimony, and NFR schedules AE-1 through AE-7B and P-1 through P-8 and Appendices, for years 2011 and 2012, respectively, in support of PEF's actual/estimated and projected costs and schedules TOR-1 through TOR-7, which reflect total project estimated costs.

PEF developed and utilized reasonable and prudent project management policies and procedures to carry out the LNP. These procedures are designed to ensure timely and cost-effective completion of the project. PEF therefore requests that the Commission find that its project management, contracting and oversight controls for 2010 were reasonable and prudent.

PEF also developed and utilized reasonable and prudent accounting and cost oversight controls. Pursuant to these policies, PEF developed its actual 2010 costs and 2011 and 2012 cost estimates based on the best information available to the Company. PEF therefore requests that the Commission find that its accounting and cost oversight controls for 2010 were reasonable and prudent.

PEF reasonably and prudently incurred capital preconstruction, construction carrying costs, and CCRC recoverable O&M expenses for the LNP in the amount of \$111,554,540 for 2010. The prudence of all costs incurred in 2010 have been supported by PEF's testimony and exhibits filed in this proceeding. No Staff or intervener witness contends that any of the actual costs the Company incurred for

the LNP for 2010 are imprudent. Accordingly, PEF requests that the Commission approve the prudence of these costs.

PEF has also reasonably estimated and projected its capital preconstruction and construction LNP costs for 2011 and 2012, in the amount of \*\*\*\*\* and \*\*\*\*\* , respectively. None of the Staff or intervener witnesses identify any specific, actual/estimated 2011 or projected 2012 LNP cost that is not reasonable. The actual/estimated 2011 and projected 2012 LNP costs reflect the Company's decision regarding the LNP schedule and its focus on obtaining key state and federal permits for the LNP.

No Intervener or Staff witness disputes the prudence of any cost incurred by PEF on the LNP in 2010 or the reasonableness of any actual/estimated cost and projected cost that PEF has incurred or expects to incur on the LNP in 2011 and 2012. Further, no witness filed testimony in this proceeding disputing PEF's analysis of the long-term feasibility of completing the LNP. Finally, no witness filed testimony in this proceeding disputing the prudence of PEF's LNP project management, contracting, accounting, and cost oversight controls.

Pursuant to Rule 25-6.0423(5)(c)5, PEF demonstrated the long-term feasibility of completing the LNP. The Company employed a two-step process to determine if the LNP is feasible. First, the Company employed a qualitative analysis of the technical and regulatory capability of completing the plants, the risks, and the costs and benefits of completing the Levy nuclear power plants. The second step was an updated, quantitative cumulative life-cycle net present value revenue requirements ("CPVRR") economic analysis that includes comparisons to the cost-effectiveness CPVRR analysis in the Company's need determination proceeding for the LNP described in Order No. PSC-08-0518-FOF-EI. The updated CPVRR indicates that the LNP is economically viable and has the potential to provide PEF and its customers with fuel and environmental cost savings over the life of the project. The LNP is also feasible from a regulatory and technical perspective. PEF has, therefore, demonstrated the long-term feasibility of completing the LNP.

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

**OPC:**

FPL - While, by the passage of Section 366.93, F.S., the Florida Legislature intended to encourage regulated utilities to build nuclear generating capacity, it expected the utilities to exercise prudence in doing so and empowered the Commission to protect customers against the costs of imprudence. Moreover, the Legislature did not, by the passage of Section 366.93, F.S., exempt nuclear projects from the requirement that utilities comply with Commission rules or alter

the Commission's power to impose sanctions where necessary to enforce its rules. The factual and legal issues that OPC intends to raise during the 2011 Nuclear Cost Recover Clause ("NCRC") evidentiary hearing, which center on FPL's Extended Power Uprate ("EPU") projects, call on the Commission to invoke each of these powers. Specifically, OPC's experts will demonstrate that, due to the extreme degrees of complexity and uncertainty to which its EPU uprate projects exposed FPL and FPL's customers, FPL's decision to "fast track" (a term of art which means abandoning traditional construction procedures, processes and sequences designed to control price for the sake of meeting an otherwise unachievable in-service date) its EPU projects was imprudent, and is causing FPL to incur cost levels that potentially will exceed the cost of FPL's alternative, "no EPU" generation portfolio. OPC asks the Commission to find that the "fast track" decision was imprudent, and to take all measures needed to protect customers in the event the costs of the EPU projects exceed the level that FPL would have spent had it elected to meet its requirements for capacity with normal planning, design engineering, bidding, and construction procedures and non-nuclear sources of capacity.

Related to the imprudent "fast track" decision is the methodology that FPL has chosen to measure the long term feasibility of its EPU projects. FPL employs a comparison of the present value of revenue requirements of a generation portfolio that assumes the presence of the EPU projects with the corresponding present value of revenue requirements associated with the generation portfolio it would build in the absence of the EPU projects. FPL's methodology is flawed for two reasons. First, FPL excludes amounts it has already spent from the feasibility calculation. As OPC's experts will demonstrate, the exclusion of "sunk costs" is acceptable in circumstances in which the ultimate project cost is known and relatively stable; however, the practice of ignoring costs incurred to date distorts the estimate of cost-effectiveness when the ultimate cost is a moving (and rapidly increasing) target, as the costs of FPL's EPU projects have become. Secondly, FPL imprudently chose not to calculate the maximum cost per installed kW of additional nuclear capacity that it could incur and remain cost-effective for customers relative to its best non-EPU alternative (the "breakeven calculation"). The breakeven calculation is needed to provide an "early warning system" to alert project managers that the EPU uprate project is nearing the point at which it would no longer be cost-effective for customers. Given the complexity and uncertainty of the EPU projects, the absence of the typical project controls (such as the completion of design engineering prior to the implementation phase and the solicitation of bids with price-assured contracts to assure cost control) and in light of the rapidly increasing estimates of the cost to complete the EPU projects, FPL should have prepared a breakeven analysis at the outset and should be updating it throughout the process. The Commission should require FPL to perform an appropriate breakeven calculation that includes all capital costs, including expenditures to date, immediately and utilize the methodology as the basis for current and future long term feasibility studies.

Further, the breakeven analyses should differentiate between the St. Lucie and Turkey Point activities, so that each distinct plant site uprate project, which has its own set of variables affecting feasibility (costs, megawatt increases, and service lives), can be measured and monitored on a stand-alone basis—and so that informed decisions to continue or not continue can be made on a plant site-specific basis.

A year ago, the Commission deferred FPL-related issues to the 2011 hearing cycle. At the time of the deferral, documents obtained from FPL in discovery showed that FPL had received an employee complaint letter and had engaged Concentric Energy Advisors to investigate the complaint. Further, in his report on the matter, Concentric Energy Advisors President John Reed criticized FPL for failing to update its May 2009 prefiled testimony at the time of the September 2009 evidentiary hearing to provide the Commission with the then current estimate of the cost of completing FPL's EPU projects. At the time of the September 2010 hearing, FPL disputed its consultant's finding. Following the deferral, OPC expert Dr. William Jacobs independently examined the circumstances surrounding FPL's decision not to amend its prefiled testimony regarding the estimate of capital costs and FPL's related long term feasibility study. Dr. Jacobs' testimony and exhibits will establish that (1) the decision to not update the May 2009 prefiled testimony was made jointly by FPL's witness and senior FPL management during the August-September 2009 time frame; (2) at the time of the September 2009 evidentiary hearing, EPU project managers had increased their capital cost estimates by some \$300 million in July 2009 and another \$144 million in August 2009; and (3) at the time of the hearing, FPL had not informed its witness on EPU feasibility of the increased July estimate or of a July 2009 feasibility analysis that took the higher estimate into account, and also had not informed its witness who sponsored the May 2009 estimate of capital costs of the August increase in estimate. OPC regards FPL's conscious, deliberate withholding of the best, most current information concerning the estimated cost of the EPU projects as a violation of Commission Rule 25-6.0423, F.A.C., which requires a utility seeking to collect nuclear-related costs in advance of its service date through the nuclear cost recovery clause to inform the Commission of the estimated costs of its project and to incorporate that estimated cost into a long term feasibility study annually. The Commission should find that FPL violated its rule, and should exercise its authority under Section 366.095, F.S. to fashion and impose on FPL a penalty that will communicate its insistence that utilities subject to its regulation—and especially those seeking to take advantage of the extraordinary and favorable (to utilities) ratemaking device of the nuclear cost recovery clause—be forthright, transparent, and current when providing information to the Commission.

PEF - The Citizens believe that in light of the totality of the facts and circumstances in the record of this docket, it is increasingly unlikely that the Levy

Nuclear Plant (LNP) will be completed – if at all -- by the 2021/2022 Commercial Operation Date (COD) schedule that the Commission accepted in 2010. According to PEF's publicly stated schedule, PEF will spend approximately \$400 million of the ratepayers' money in 2011-2013. At this point, the Citizens do not contest the Commission's decision to allow the Company to pursue the COL and absent any evidence that the Commission has been misled about the Company's actual plans regarding the COD for the LNP, this decision should not be revisited. However, the Commission should continue to evaluate the totality of circumstances surrounding the likelihood that PEF will actually construct LNP and if so, that it will construct it on the currently advertised schedule. The Citizens urge the Commission to scrutinize the Company's filing and withhold approval of any costs – not already incurred or legally obligated – which are not strictly necessary to achieve receipt of the COL. The totality of circumstances in this case include that: (1) PEF appears to be de-emphasizing the LNP in its staffing decisions; (2) The cost – effective feasibility scenarios evaluated by PEF continue to trend negative; (3) Key enterprise risks (natural gas prices and greenhouse gas legislation) are trending counter to LNP feasibility; (4) The potential prospect of joint owners remains unlikely given the increasing uncertainty that PEF will complete the LNP project or complete it on the advertised schedule; (5) Public support for new nuclear generation has waned in light of events in Japan and elsewhere; and (6) Significantly, in a process that culminated in a high level retreat only two weeks BEFORE the 2010 NCRC hearings, PEF undertook a high level scenario planning process (most of which was withheld from Staff auditors and the OPC through redactions) that identified a 2027/2029 COD for the LNP units. In this process the participants were instructed not to pick a scenario. This approach to the scenario planning process allowed the Company to publicly adhere to the COD date that the Commission relied upon when it approved the Company's revised LNP schedule and the addition of \$400 million. Despite being requested by the Staff Auditors in December 2010, the scenario plan documents were not disclosed or produced to the auditors until June 10, 2011. As a result, the Staff Auditors, having completed the audit in final draft form at the time these documents were produced, were hampered in their ability to fully evaluate the significance of the Company's 2010 scenario planning process. These circumstances call into serious question any further reliance on the 2021/2022 COD that PEF has publicly provided to the Commission, and continues to provide.

Based upon the foregoing, the Commission should withhold approval for cost recovery from customers of any and all LNP expenditures that are not directly related to achieving the COL. By doing this, the Commission will limit the ratepayers' losses in paying for PEF to achieve nothing but a COL for a staggering \$1 billion cost even if PEF cancels the LNP project after receipt of the COL. The Citizens emphasize that this enormous cost is mostly attributable to PEF's hasty and ill-advised signing of the EPC on December 31, 2008.

**SACE:** Section 366.93, F.S., provides for advance cost recovery of certain costs for utilities engaged in the “siting, design, licensing, and construction” of nuclear power plants, including new nuclear power plants. In Order No. PSC-11-0095-FOF-EI, the Commission interpreted this statutory provision to require that a utility “must continue to demonstrate *its intent to build the nuclear power plant* for which it seeks advance recovery of costs to be in compliance with Section 366.93, F.S.” Order at 9 (emphasis added). In the current docket, the testimony of PEF and FPL witnesses paying lip service to the Commission’s intent requirement in regards to the LNP or the Turkey Point 6 & 7 units (“proposed new nuclear projects”) is wholly undermined by the activities of both FPL and PEF. Due to the great uncertainty and risk surrounding new nuclear development in the United States, which has been greatly exacerbated by, amongst other factors, the Fukushima nuclear disaster in Japan, PEF and FPL both continue their approach announced last year of delaying major capital expenditures on these proposed new nuclear projects for the near term and instead focusing completely upon obtaining Combined Operating Licenses (“COL”) from the Nuclear Regulatory Commission (“NRC”). This “non-construction” approach on the part of both PEF and FPL fails to demonstrate the requisite intent to actually construct the new nuclear projects, and, as a result, the utilities are not in compliance with the mandate of Section 366.93, F.S.

Furthermore, Rule 25-6.0423(5)(c)5, F.A.C., explicitly and unequivocally requires PEF and FPL to submit for Commission review and approval a detailed analysis demonstrating the long-term feasibility of completing these proposed new nuclear projects. The testimony by witnesses for the utilities, staff, and OPC in the current docket establishes that both PEF and FPL have failed to meet their burden to demonstrate the long-term feasibility of these proposed new projects. Therefore, burdening ratepayers with further costs for these projects would not be fair, just, or reasonable.

In the 2009 Nuclear Cost Recovery hearing (Docket 090009-EI), SACE alerted the Commission to the great uncertainty and risk surrounding the feasibility of PEF’s these proposed new nuclear projects. SACE warned the Commission that this uncertainty and risk would result in significant scheduling delays for the proposed reactors and significant increases in the total costs, and moreover would adversely affect the feasibility of these proposed new nuclear projects. However, PEF and FPL refused to acknowledge this uncertainty and risk and the resulting adverse impacts at the hearing. In 2010, and now again in 2011, both PEF and FPL have belatedly acknowledged the great uncertainty and risk surrounding the feasibility of ever completing these proposed new nuclear reactors. In 2011, this uncertainty and risk have significantly increased as a result of, amongst other factors, the Fukushima nuclear disaster in Japan, and the resulting waning public support for construction of new nuclear generation. As a result, both PEF and FPL continue to endeavor on a “non-construction” approach under the guise of keeping ratepayer rates as low as possible. Nevertheless, as a result of the



utilities' failure to acknowledge what was already apparent in 2009, PEF and FPL ratepayers are on the hook for billions of dollars spent on reactors which likely will never be constructed.

It is the responsibility of the Commission to fix "fair, just and reasonable" rates for Florida ratepayers. Fla. Stat. § 366.06. In this docket, because FPL and PEF have failed to demonstrate the requisite intent to construct these proposed new nuclear projects, or the long-term feasibility of completing these new projects, the utilities have as a result failed to demonstrate that the costs for which they seek recovery for 2011 and 2012 are reasonable and/or prudent. As a result, the Commission should deny both FPL and PEF's requested cost recovery for 2011 and 2012, as is it would be unfair, unjust, and unreasonable for the Commission to allow the utilities to incur further expenses for these proposed new reactors, or to recover those expenses from Florida ratepayers, until PEF and FPL themselves demonstrate the feasibility of the proposed new reactors, as well as the requisite intent to actually build the proposed new reactors.

**FIPUG:** FIPUG supports the development of cost effective, reasonable and prudent energy sources to serve Florida consumers. However, given the current state of the nuclear industry, including the recent nuclear disaster in Japan, as well as the high costs and numerous delays experienced by both PEF and FPL in pursuit of projects that may never come to fruition, both utilities must be held to strict proof regarding their activities related to nuclear power generation. FPL and PEF have the burden to demonstrate that the nuclear projects that are the subject of this hearing are the most reasonable and cost-effective way to serve ratepayer needs. The Commission must bear in mind that at the end of the day, it is the consumers who bear the large cost burden of these projects.

As to FPL, FPL failed to advise the Commission of significant changes related its 2009 nuclear cost recovery request. In 2009, FPL permitted its witness to take the stand without updating his testimony to provide the most current information to the Commission, knowing that the testimony the witness presented was inaccurate and out of date. The Commission has the authority to, and should, take action regarding FPL's actions in the 2009 proceeding.

Further, as to FPL's EPU analysis, FPL has failed to provide a break-even analysis of the project. Thus, FPL has not provided an appropriate feasibility analysis as required by Commission rule. In addition, the CPVRR that FPL has provided fails to properly evaluate the cost effectiveness of the EPU project because it removes sunk costs from the analysis and thus greatly overstates the cost-effectiveness of the project. Finally, it was imprudent for FPL to "fast track" the EPU projects as demonstrated by the many costs overruns and uncertainties relating to the project.

As to PEF, no further costs should be collected for the Levy Nuclear Plant (LNP) at this time. PEF has failed to demonstrate that it intends to move forward with the construction of the plant or that this plant will ever come on line.

Regarding PEF's Extended Power Uprate (EPU) at Crystal River 3, no further costs for this project should be borne by ratepayers. CR3, the nuclear unit to which the uprate is applicable, has been out of service since September 2009. It is unclear when, or if, CR3 will ever come back in service. Because the EPU project is an adjunct to CR3, no more costs related to it should be borne by ratepayers as its future is highly uncertain.

**PCS PHOSPHATE:** In prior years, the principal focus of PCS Phosphate's concerns in the nuclear cost recovery clause proceedings have centered upon:

1. The stunning cost estimates associated with the proposed Levy Nuclear Project ("LNP") and the inevitable slippage of the expected commercial in-service dates for those units compared to the forecast originally provided by PEF.
2. PEF's failure to secure joint owner participation in LNP prior to embarking upon the project, and the substantially diminished prospects for meaningful participation by others in the project in light of the rising costs, extended commercial expected operation dates, and distinctly negative trends affecting the comparative economics of building new nuclear units at this time.
3. The need to mitigate the immediate rate impacts on Florida consumers and businesses of LNP expenditures approved by the Commission for clause recovery.
4. The urgent need for the Commission to confront the untenable rate consequences to PEF ratepayers associated with nuclear clause recovery of PEF's proposed spending plan for LNP absent meaningful joint owner participation in the project.

In the 2010 NCRC proceeding, the Commission approved PEF's proposal to dramatically alter its approach to the LNP project in light of significant regulatory delays that PEF estimated would postpone the project's expected entry into commercial service by five years and add another \$5 billion to total estimated LNP costs. By shifting from a "Go first" to a "Go slow" approach, PEF planned to continue pursuit of a Combined Operating License from the Nuclear Regulatory Commission ("NRC"), scale back spending in most other non-licensing areas, and halt or defer procurement of most long lead-time equipment. For NCRC clause recovery purposes, the cost of managing the long lead-time equipment procurement slow-down constituted both a major cost driver and a major area of uncertainty.

In this year's NCRC filing, under the guise of no material change in LNP cost and schedule, several material developments have occurred. First, PCS Phosphate agrees with Florida Office of Public Counsel ("OPC") that the trends for most relevant factors associated with continued pursuit of the LNP units (e.g., natural gas prices, prospects for natural climate change legislation) continue to be negative or have become more negative. The economic logic for construction of the units seems increasingly tenuous, and, more than ever, seems to hang solely upon the Florida ratepayer support provided by the nuclear cost recovery statute and rule.

Second, PEF's filing in this docket reveals that the utility considerably over-estimated its costs associated with winding down or deferring procurement of long lead-time equipment. This factor accounts for the majority of the over-collection of costs in the 2011 factor. Rather than reduce the nuclear cost recovery factor for 2012 to correct for this mis-estimation, PEF proposes instead to accelerate the amortization of LNP costs pursuant to the rate management plan the Commission approved in 2009 by nearly doubling the amount of rate management costs to be recovered in 2012. PCS Phosphate strongly opposes the PEF proposal and supports OPC's position that accelerated amortization is inappropriate under the circumstances at hand today. As OPC properly notes, Florida's economy continues to struggle and only costs that are strictly necessary should be recovered from consumers in 2011 and 2012. Also, given the diminishing prospects of LNP as a viable project, it makes far more sense to smooth out LNP rate impacts over time (as originally contemplated in the rate management plan) than to exacerbate rate impacts unnecessarily.

Finally, it is transparent that LNP is not viable under any circumstances absent meaningful joint owner participation. PCS Phosphate urges the Commission to require PEF to secure such participation levels before approving nuclear recovery for any project expenditures beyond securing a license from the NRC.

Next, this year the issues associated with the delamination of the Crystal River 3 ("CR3") containment structure have eclipsed LNP as the primary concern of this docket. The most recent delamination event, announced in March 2011, was the result of PEF's attempt to repair the previous delamination that occurred in 2009 and is now the subject matter of Commission review in Docket No. 100437-EI. PCS Phosphate offers no position on any issues that are properly presented in that docket. The March 2011 delamination has, however, materially altered PEF's plans with respect to the CR3 extended power uprate ("EPU") that are addressed in this proceeding. In late June, PEF announced that it intended to attempt to repair CR3 over a period of several years. The considerably far-reaching impacts of the new delamination include what likely amounts to a considerable additional delay in the EPU project. PCS Phosphate offered qualified support for PEF's motion to defer consideration of CR3 EPU feasibility and prudence questions and to remove almost \$17 million in CR3 EPU revenue requirements from the

proposed 2012 nuclear clause recovery. In all other respects with respect to CR3 issues in this year's proceeding, PCS Phosphate supports the positions urged by OPC.

**FEA:** Federal Executive Agencies intervened in this proceeding to ensure that only prudent, and reasonable costs are recovered from rate payers, and that the nuclear projects that are the subject of this docket are being pursued in a cost effective, prudent and reasonable manner. FEA believes that the companies bear the burden to show that the nuclear projects proposed will provide the lowest cost, reliable power for Florida ratepayers. If circumstances have changed since the projects were originally proposed and approved, the Commission should take whatever action it deems appropriate to ensure that Florida ratepayers will receive the benefit of the proposed projects.

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

#### VIII. ISSUES AND POSITIONS

The issues and positions of the parties are as follows. The inclusion of Issue 10B and Issues 16-18 remains in dispute.

**ISSUE A:** Should the Commission defer its decision regarding the long-term feasibility of completing the Crystal River Unit 3 (CR3) Extended Power Uprate (EPU) project and the reasonableness of PEF's 2011 and 2012 ongoing construction expenditures, including associated carrying charges?

#### POSITIONS

**PEF:** This procedural issue is the subject of PEF's pending Motion for Deferral, (which appears to be unopposed by the parties) and should not be presented as a fact issue for determination in the proceeding. PEF also incorporates its Motion herein by reference.

**OPC:** Based on the circumstances of PEF's inability to repair the CR3 containment building before 2014, the information contained in the testimony that PEF filed on March 1 and May 2, 2011, is no longer valid to provide a legal basis for customers paying estimated or projected EPU uprate costs for the years 2011 and 2012. Due to the uncertainty of the success of the chosen repair path by PEF, the Commission does not have enough information in the record to make a decision regarding the feasibility of the CR3 uprate project at this time or in this hearing cycle. In light of PEF's having effectively withdrawn its request for recovery of its estimated 2011 and 2012 revenue requirements and the reliance upon this

effective withdrawal by the OPC, the OPC objects to any *ad hoc* testimony ( i.e. not pre-filed) concerning anything related to the CR3 delamination or costs incurred by PEF after October 2, 2009. In reliance upon statements in Witness Jon Franke's June 13, 2011 deposition as well as in the Motion to Defer, the OPC ceased its efforts to rebut the PEF testimony for these years' costs (notwithstanding that the testimony was no longer supportable based on decisions made by PEF after the filing). Any testimony allowed on the issue will deprive the OPC, not to mention the other Intervenors, of the most fundamental due process rights guaranteed under the provisions of Chapter 120, Florida Statutes, and the Constitutions of Florida and the United States of America.

Failure to grant the Company's unopposed Motion to Defer will leave the Commission with evidence that would be unsworn, unfairly un-rebutted, and supporting a \$15.7 million increase in revenue requirements wholly supported by inaccurate testimony. The Commission should entertain no testimony or evidence on this matter and grant the Company's Motion to Defer.

**SACE:** Adopts OPC's position.

**FIPUG:** It is FIPUG's position that the subject of the uprate at CR3 and the reasonableness of any costs associated with the uprate should not be considered at this time. Not only should they not be considered, but no such costs should be collected from ratepayers, unless and until CR3 comes back on line *and* PEF provides information *at that time* documenting the feasibility and costs and benefits of moving forward with the uprate project, taking into account the extended outage of CR3. Further, since PEF cannot demonstrate feasibility of the project in the 2011 proceeding, any costs relating to the project should be disallowed.

**PCS PHOSPHATE:** Yes.

**FEA:** Agrees with FIPUG.

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

**ISSUE 1:** Should any FPL 2010 Nuclear Cost Recovery Clause rate-case type expenses be disallowed from recovery?

**FPL:** No. FPL used a separate non-Nuclear Cost Recovery Clause work order to capture regulatory expenses (i.e., "rate case type expenses") related to the 2010 Nuclear Cost Recovery hearing, and therefore no adjustment is needed. (Powers)

**PEF:** PEF takes no position on this issue.

**OPC:** OPC's understanding is that this issue is intended to address the same factual situation that is encompassed by Issue no. 15. As its response to Issue 1, OPC adopts and incorporates by reference its position on Issue No. 15(A-C).

**SACE:** Adopts OPC's position.

**FIPUG:** Yes. All rate case type expenses should be disallowed.

**PCS PHOSPHATE:** No position.

**FEA:** Agrees with FIPUG.

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

**ISSUE 2:** Do FPL's activities through 2010 related to Turkey Point Units 6 & 7 qualify as "siting, design, licensing, and construction" of a nuclear power plant as contemplated by Section 366.93, F.S.? [LEGAL]

**FPL:** Yes. FPL is conducting activities and incurring necessary expenses in the course of actively pursuing the license, permits and approvals necessary to create the option for new nuclear generation consistent with the intent of Section 366.93, F.S., which is to promote electric utility investment in nuclear power plants. Because FPL has received a determination of need for Turkey Point 6 & 7 pursuant to Section 403.519(4), F.S., FPL is entitled to recover all prudently incurred costs including, but not limited to, those associated with siting, design, licensing, and construction. The fact that FPL is not simultaneously involved in each category of activity (i.e., FPL is not currently in the construction phase of the project) does not affect the applicability of Section 366.93, F.S., and the Commission's Nuclear Cost Recovery Rule to FPL's Turkey Point 6 & 7 costs. (Scroggs)

**PEF:** PEF takes no position on this issue.

**OPC:** No position.

**SACE:** No. FPL's activities through 2010 fail to demonstrate the requisite intent to actually construct the Turkey Point 6 & 7 Units. Rather, FPL's filings through 2010, as well as public statements made by FPL officials, demonstrate that FPL was, and still is, only engaged in an attempt to obtain the requisite federal, state, and local licenses for the Turkey Point 6 & 7 units. No final decision to proceed with construction of the Turkey Point 6 & 7 Units has been made.

**FIPUG:** No. FPL has not demonstrated that it intends to actually construct Turkey Point Units 6 & 7.

**PCS PHOSPHATE:** No position.

**FEA:** Agrees with FIPUG.

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

**ISSUE 3:** Should the Commission approve what FPL has submitted as its 2010 and 2011 annual detailed analyses of the long-term feasibility of completing the Turkey Point 6 & 7 project, as provided for in Rule 25-6.0423, F.A.C? If not, what action, if any, should the Commission take?

**FPL:** Yes. FPL used three different fuel cost forecasts and three environmental compliance cost forecasts for several types of emissions (SO<sub>2</sub>, NO<sub>x</sub>, and CO<sub>2</sub>) in its analyses. This allows a number of combinations of fuel and environmental compliance costs to serve as possible future scenarios with which to view the economics of Turkey Point 6 & 7. FPL annually updates these fuel and environmental compliance cost projections, and updates a number of other assumptions such as the load forecast, for its economic analyses. Based on this analysis, Turkey Point 6 & 7 is projected to be a solidly cost-effective addition for FPL's customers in six out of seven scenarios and is neutral in the seventh scenario. The results of the analysis fully support the feasibility of continuing the Turkey Point 6 & 7 project. (Sim, Scroggs)

**PEF:** PEF takes no position on this issue.

**OPC:** No position.

**SACE:** No. FPL has failed to complete, and properly analyze, a realistic feasibility assessment that properly takes into account important changes in key variables which have adversely impacted the feasibility of new nuclear reactors, including, but not limited to: declining natural gas costs; declining estimates of cost of carbon; other enterprise risks; impacts of Fukushima nuclear disaster; and the true impact of efficiency and renewables.

The Commission should deny cost recovery for FPL's 2010, 2011, and 2012 costs.

**FIPUG:** No.

**PCS PHOSPHATE:** No position.

**FEA:** No.

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

**ISSUE 3A:** Was FPL's 2010 decision to continue pursuing a Combined Operating License from the Nuclear Regulatory Commission for Turkey Point Units 6 & 7 reasonable? If not, what action, if any, should the Commission take?

**FPL:** Yes. FPL's decision to continue pursuing a Combined Operating License is reasonable because obtaining a license will provide FPL an option to build Turkey Point 6 & 7 that can be exercised during a period of 20 years. Pursuing a COL and obtaining this option is of great value to FPL's customers, because FPL's feasibility analysis in this proceeding shows that exercising the option and constructing Turkey Point 6 & 7 is projected to save customers tens of billions of dollars in fuel and environmental costs in a wide range of potential future fuel and environmental compliance cost scenarios. This is in addition to greatly reducing reliance on fossil fuels and improving fuel diversity consistent with the direction of the Florida Legislature, as well as reducing environmental emissions and supporting electric system reliability with base load generating capacity. While providing additional flexibility during uncertain times, obtaining a COL does not prevent the Company from pursuing other resource strategies should such strategies prove favorable to FPL's customers. Accordingly, continued pursuit of the COL is reasonable and consistent with the prudent, step-wise management approach that FPL has taken for Turkey Point 6 & 7 since its inception. (Scroggs, Diaz)

**PEF:** PEF takes no position on this issue.

**OPC:** No position.

**SACE:** No. It was, and still is, unreasonable for FPL to continue to incur significant additional costs on the licensing of the proposed Turkey Point Units 6 & 7, and pass these costs on to its ratepayers, with no real demonstrated intent to actually construct the reactors and with no demonstration of the long-term feasibility of completing the reactors.

Given this failure to demonstrate the requisite intent to build Turkey Point Units 6 & 7, as well as the feasibility of the same, the Commission should not approve recovery of any additional costs.

**FIPUG:** No.

**PCS PHOSPHATE:** No position.

**FEA:** No.



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

**ISSUE 4:** What is the current total estimated all-inclusive cost (including AFUDC and sunk costs) of the proposed Turkey Point Units 6 & 7 nuclear project?

**FPL:** FPL's current non-binding cost estimate range for Turkey Point 6 & 7 is \$3,482/kW to \$5,063/kW in overnight costs, or \$12.8 billion to \$18.7 billion including carrying costs, as stated in the May 2, 2011 direct testimony of Steven Scroggs. (Scroggs)

**PEF:** PEF takes no position on this issue.

**OPC:** No position.

**SACE:** No position.

**FIPUG:** Given the scope and size of this undertaking, this information is critical to provide transparency to those who are paying for this enormous project. Further, the Commission must consider whether such expenditures make sense. This information is in the possession of FPL and should be provided to the Commission and ratepayers without objection.

**PCS PHOSPHATE:** No position.

**FEA:** Agrees with FIPUG.

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

**ISSUE 5:** What is the current estimated planned commercial operation date of the planned Turkey Point Units 6 & 7 nuclear facility?

**FPL:** For planning purposes, FPL's current estimated commercial operations dates of Turkey Point Units 6 & 7 are 2022 and 2023, respectively, as stated in the May 2, 2011 direct testimony of Steven Scroggs. (Scroggs)

**PEF:** PEF takes no position on this issue.

**OPC:** No position.

**SACE:** No position.

**FIPUG:** Given the scope and size of this undertaking, this information is critical to provide transparency to those who are paying for this enormous project. Further, the

Commission must consider whether the commercial operation date makes sense in view of the magnitude of the expenditures. This information is in the possession of FPL and should be provided to the Commission and ratepayers without objection.

**PCS PHOSPHATE:** No position.

**FEA:** Agrees with FIPUG.

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

**ISSUE 6:** Should the Commission find that for years 2009 and 2010 FPL's project management, contracting, accounting and cost oversight controls were reasonable and prudent for the Turkey Point Units 6 & 7 project?

**FPL:** Yes. FPL relies on its comprehensive corporate and overlapping business unit controls. These comprehensive and overlapping controls include FPL's Accounting Policies and Procedures; financial systems and related controls including FPL's general ledger and construction asset tracking system; FPL's annual budgeting and planning process and reporting and monitoring of costs incurred; and Business Unit specific controls and processes. The project internal controls are comprised of various financial systems, department procedures, work/desktop instructions and best practices, providing governance and oversight of project cost and schedule processes. The project management, cost estimation, and risk management attributes of FPL are highly developed, well documented, and adhered to by the project teams. FPL's management decisions with respect to the Turkey Point 6 & 7 project are the product of properly qualified, well-informed FPL management following appropriate procedures and internal controls. (Scroggs, Reed, Diaz, Powers)

**PEF:** PEF takes no position on this issue.

**OPC:** No position.

**SACE:** No.

**FIPUG:** No.

**PCS PHOSPHATE:** No position.

**FEA:** No.

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

**ISSUE 7:** What system and jurisdictional amounts should the Commission approve as FPL's final 2009 and 2010 prudently incurred costs and final true-up amounts for the Turkey Point Units 6 & 7 project?

**FPL:** For 2009, the Commission should approve \$37,731,525 (system) and \$37,599,045 (jurisdictional) as FPL's final 2009 prudently incurred preconstruction costs, as well as \$857,693 in preconstruction carrying charges and \$373,162 in jurisdictional carrying charges on prior years' unrecovered site selection costs. FPL's 2009 expenditures were supported by comprehensive procedures, processes and controls that help ensure those expenditures were the result of prudent decision making. The final 2009 true up amount is an over recovery of \$7,845,423 in pre-construction expenditures and an over recovery of \$2,802,854 in preconstruction carrying charges and on site selection unrecovered costs. The net amount of (\$10,648,277), which is currently included in FPL's 2011 NCRC recovery amount, should be approved.

For 2010, the Commission should approve \$25,593,577 (system) and \$25,291,109 (jurisdictional) as FPL's final 2010 prudently incurred preconstruction costs, as well as (\$5,849,900) in preconstruction carrying charges and \$145,965 in jurisdictional carrying charges on prior years' unrecovered site selection costs. FPL's 2010 expenditures were supported by comprehensive procedures, processes and controls that help ensure those expenditures were the result of prudent decision making. The final 2010 true up amount is an over recovery of \$16,834,744 in pre-construction expenditures and an over recovery of \$1,115,115 in preconstruction carrying charges and on site selection unrecovered costs. The net amount of (\$17,949,858), should be approved and included in FPL's 2012 NCRC recovery amount. (Scroggs, Reed, Powers)

**PEF:** PEF takes no position on this issue.

**OPC:** No position.

**SACE:** For 2010, none. FPL has not demonstrated that completion of the Turkey Point 6 & 7 project is feasible in the long-term as required by Rule 25-6.0423(5)(c)5, F.A.C., therefore no such costs could be reasonably estimated and/or incurred.

**FIPUG:** This is a fall out amount from the substantive issues.

**PCS PHOSPHATE:** No position.

**FEA:** Agrees with FIPUG.

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

**ISSUE 8:** What system and jurisdictional amounts should the Commission approve as reasonably estimated 2011 costs and estimated true-up amounts for FPL's Turkey Point Units 6 & 7 project?

**FPL:** The Commission should approve \$37,955,536 (system) and \$37,506,973 (jurisdictional) as FPL's reasonable 2011 actual/estimated pre-construction costs, as well as (\$812,681) in pre-construction carrying charges and \$171,052 in jurisdictional carrying charges on prior years' unrecovered site selection costs. FPL's 2011 actual/estimated expenditures are supported by comprehensive procedures, processes and controls which help ensure that these costs are reasonable.

The 2011 true up amount is an under recovery of \$8,385,772 in pre-construction expenditures and an over recovery of \$3,001,875 in pre-construction carrying charges and on site selection unrecovered costs. The net amount of \$5,383,897 should be included in FPL's 2012 NCRC recovery amount. (Scroggs, Powers)

**PEF:** PEF takes no position on this issue.

**OPC:** No position.

**SACE:** None. FPL has not demonstrated that completion of the Turkey Point 6 & 7 project is feasible in the long-term as required by Rule 25-6.0423(5)(c)5, F.A.C., therefore no such costs could be reasonably estimated and/or incurred.

**FIPUG:** This is a fall out amount from the substantive issues.

**PCS PHOSPHATE:** No position.

**FEA:** Agrees with FIPUG.

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

**ISSUE 9:** What system and jurisdictional amounts should the Commission approve as reasonably projected 2012 costs for FPL's Turkey Point Units 6 & 7 project?

**FPL:** The Commission should approve \$31,393,088 (system) and \$31,022,080 (jurisdictional) as FPL's reasonable 2012 projected pre-construction costs, as well as \$5,620,298 in pre-construction carrying charges and \$180,883 in carrying charges on prior years' unrecovered site selection costs. The total amount of \$36,823,261 should be included in setting FPL's 2012 NCRC recovery amount. FPL's 2012 projected expenditures are supported by comprehensive procedures, processes and controls which help ensure that these projected costs are reasonable. (Scroggs, Powers)

**PEF:** PEF takes no position on this issue.

**OPC:** No position.

**SACE:** None. FPL has not demonstrated that completion of the Turkey Point 6 & 7 Units is feasible in the long-term as required by Rule 25-6.0423(5)(c)5, F.A.C., therefore no such costs could be reasonably projected and/or incurred.

**FIPUG:** This is a fall out amount from the substantive issues.

**PCS PHOSPHATE:** No position.

**FEA:** Agrees with FIPUG.

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

**ISSUE 10:** Should the Commission approve what FPL has submitted as its 2010 and 2011 annual detailed analyses of the long-term feasibility of completing the EPU project, as provided for in Rule 25-6.0423, F.A.C? If not, what action, if any, should the Commission take?

**FPL:** Yes. FPL used three different fuel cost forecasts and three environmental compliance cost forecasts for several types of emissions (SO<sub>2</sub>, NO<sub>x</sub>, and CO<sub>2</sub>) in its analyses. This allows a number of combinations of fuel and environmental compliance costs to serve as possible future scenarios with which to view the economics of the EPU project. Additionally, FPL annually updates these fuel and environmental compliance cost projections, and updates a number of other assumptions such as the load forecast, for its economic analyses. Based on this analysis, the EPU Project is still projected to be a solidly cost-effective addition for FPL's customers in seven out of seven scenarios. Additionally, the substantial benefits of the EPU project in terms of fuel diversity, reduced fossil fuel usage, and system emission reductions are evident. The results of the analysis fully support the feasibility of continuing the EPU Project. (Sim, Jones)

**PEF:** PEF takes no position on this issue.

**OPC:** No. The Commission should reject the analyses of long-term feasibility of the Extended Power Uprate projects that FPL submitted for the reasons described in OPC's positions on Issues 10A and 10B, which are subparts of this topic that are designed to identify, for appropriate analysis and separate resolution, specific disputes regarding FPL's analyses.

**SACE:** Adopts OPC's position.

**FIPUG:** No. FPL has failed to submit a break-even analysis for the EPU project. Further, FPL's practice of excluding sunk costs from its cost-effectiveness analysis is inappropriate and has the impact of overstating the project's cost-effectiveness.

**PCS PHOSPHATE:** No position.

**FEA:** Agrees with FIPUG.

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

**ISSUE 10A:** STRICKEN.

**ISSUE 10B:** Should the Commission require FPL to perform separate long-term feasibility analyses for the Turkey Point and St. Lucie uprate activities? [DISPUTED]

**FPL:** No. FPL proposed and has managed the EPU project as a comprehensive project encompassing both sites since its inception, and the FPSC approved the project in its entirety in its need determination for the overall system and customer benefits that would be realized from the project. OPC's recommendation to require that the analysis of the EPU project be broken out into two separate, site-specific parts also ignores this fact as well as the cost savings and efficiencies that have been gained by proceeding with one, comprehensive project. (Sim, Jones, Deason)

FPL notes that this issue is subject to FPL's pending Motion to Strike.

**PEF:** PEF takes no position on this issue.

**OPC:** Yes. The economic feasibility of an EPU project, which entails high initial capital costs, is dependent on the ability of the expanded unit to generate additional fuel savings during its service life sufficient to offset those capital costs and provide net savings to customers. Said differently, the cost-effectiveness to customers is a function of the interplay of the megawatts of capacity added to an existing unit, the capital costs incurred to obtain the additional capacity, and the remaining service years during which the expanded facility will continue to operate (and generate fuel savings). The St. Lucie and Turkey Point plant sites are geographically separate. The generating units are physically distinct. The uprate activities differ with respect to capital costs, megawatt increases, and, perhaps most importantly, remaining plant life: Together, the two St. Lucie nuclear units have 14 more "unit-years" of operation left before their licenses will expire than the two Turkey Point nuclear units. Clearly, these are separate projects having separate parameters of cost-effectiveness. Equally clearly, the Turkey Point project, with higher projected capital costs and a significantly

shorter operational life within which to overcome those higher capital costs with lower fuel costs, has a greater “burden” to overcome to demonstrate economic feasibility. Especially as costs have escalated significantly beyond the amounts told to the Commission in 2007, FPL should not be permitted to blur the cost-effectiveness of these separate undertakings by consolidating them into a single cost-effectiveness calculation. Separate calculations will demonstrate whether the St. Lucie project has been “carrying” the higher-costing, shorter-term Turkey Point project and will measure whether each is cost-effective. The Commission should require FPL to perform separate breakeven calculations for the St. Lucie and Turkey Point EPU activities immediately, so that the cost-effectiveness of each can be assessed and decisions to continue or not continue can be made on a stand-alone basis.

**SACE:** Adopts OPC’s position.

**FIPUG:** Yes. Each project should be examined separately. There are many differences between the two projects that must be evaluated separately so as to do a meaningful cost-effectiveness analysis.

**PCS PHOSPHATE:** No position.

**FEA:** Agrees with OPC and FIPUG.

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

**ISSUE 11:** Should the Commission find that for the years 2009 and 2010 FPL’s project management, contracting, accounting and cost oversight controls were reasonable and prudent for the EPU project?

**FPL:** Yes. FPL relies on its comprehensive corporate and overlapping business unit controls. These comprehensive and overlapping controls include FPL’s Accounting Policies and Procedures; financial systems and related controls including FPL’s general ledger and construction asset tracking system; FPL’s annual budgeting and planning process and reporting and monitoring of costs incurred; and Business Unit specific controls and processes. The project internal controls are comprised of various financial systems, department procedures, work/desktop instructions and best practices, providing governance and oversight of project cost and schedule processes. The project management, cost estimation, and risk management attributes of FPL are highly developed, well documented, and adhered to by the project teams. FPL’s management decisions with respect to the EPU project are the product of properly qualified, well-informed FPL management following appropriate procedures and internal controls. (Jones, Reed, Derrickson, Powers)

**PEF:** PEF takes no position on this issue.

**OPC:** No. The decision to forgo (as a result of “fast tracking”) the protections inherent in the normal processes, procedures, and sequences of design engineering, bidding, and construction; the omission of a breakeven calculation; and the practice of rolling separate undertakings having individual cost-effectiveness considerations into a single feasibility study are examples of areas in which FPL was deficient. As further statements of its position on Issue 11, OPC adopts and incorporates by reference its positions on Issues 10A, 10B, 16, 17, and 18.

**SACE:** Adopts OPC’s position.

**FIPUG:** No. FPL’s “fast track” approach was not reasonable or prudent, as many safeguards inherent in a more deliberate approach were omitted. Further, FPL’s failure to conduct a break even analysis was also imprudent.

**PCS PHOSPHATE:** No position.

**FEA:** Agrees with FIPUG.

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

**ISSUE 12:** What system and jurisdictional amounts should the Commission approve as FPL’s final 2009 and 2010 prudently incurred costs and final true-up amounts for the EPU project?

**FPL:** For 2009, the Commission should approve \$237,677,629 (system) in EPU expenditures and \$498,077 (system) in O&M cost as FPL’s final 2009 prudently incurred costs. The resultant jurisdictional costs, net of joint owner and other adjustments, are \$236,605,950 for EPU expenditures, \$16,459,883 in carrying charges, and \$480,934 in O&M costs. In addition, 2009 prudently incurred jurisdictional base rate revenue requirements are \$12,802. FPL’s 2009 EPU costs are supported by comprehensive procedures, processes and controls that help ensure those expenditures were the result of prudent decision making. The final 2009 true up amount is an over recovery of \$3,837,507 in carrying costs, an over recovery of \$63,533 in O&M costs and an over recovery of \$70,658 in base rate revenue requirements. The net amount of (\$3,971,698), which is currently being recovered in FPL’s 2011 NCRC recovery amount, should be approved.

For 2010, the Commission should approve \$309,982,999 (system) in EPU expenditures and \$7,176,395 (system) in O&M costs as FPL’s final 2010 prudently incurred costs. The resultant jurisdictional costs, net of joint owner and other adjustments, are \$289,147,514 for EPU expenditures, \$41,568,087 in carrying charges, and \$7,067,402 in O&M costs. In addition, 2010 prudently



incurred jurisdictional base rate revenue requirements are \$414,079. FPL's 2010 EPU costs are supported by comprehensive procedures, processes and controls that help ensure those expenditures were the result of prudent decision making. The final 2010 true up amount is an over recovery of \$784,236 in carrying costs, an under recovery of \$3,926,433 in O&M costs and an over recovery of \$1,610,665 in base rate revenue requirements. The net amount of \$1,531,532, should be approved and included in FPL's 2012 NCRC recovery amount. (Jones, Reed, Derrickson, Powers)

**PEF:** PEF takes no position on this issue.

**OPC:** The Commission should find that FPL was imprudent when it decided to forgo the protections against excessive costs inherent in the normal processes, procedures, and sequences of design engineering, bidding, and construction and instead "fast track" the EPU projects to meet an otherwise unattainable in-service date. The costs subject to disallowance as a consequence of FPL's imprudence should be measured on the basis of a breakeven analysis performed at the time the full costs of the EPU projects are known, as described in OPC's position on Issue 18.

**SACE:** Adopts OPC's position.

**FIPUG:** All costs that flow from FPL's imprudent "fast track" approach should be disallowed.

**PCS PHOSPHATE:** No position.

**FEA:** Agrees with FIPUG.

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

**ISSUE 13:** What system and jurisdictional amounts should the Commission approve as reasonably estimated 2011 costs and estimated true-up amounts for FPL's EPU project?

**FPL:** The Commission should approve \$587,845,328 (system) in EPU expenditures and \$12,721,405 (system) in O&M costs as FPL's reasonable actual/estimated 2011 costs. The resultant jurisdictional costs, net of joint owner and other adjustments, are \$558,520,431 for EPU expenditures, \$70,287,307 in carrying charges, and \$12,263,818 in O&M costs. In addition, reasonable jurisdictional base rate revenue requirements are \$16,585,797, with carrying charges of (\$432,212). FPL's 2011 actual/estimated EPU costs are supported by comprehensive procedures, processes and controls which help ensure that these costs are reasonable.

The 2011 true up amount is an under recovery of \$21,157,568 in carrying costs, an under recovery of \$8,346,616 in O&M costs, and an over recovery of \$11,684,594 in base rate revenue requirements with carrying charges of (\$432,212). The net amount of \$17,387,377 should be included in setting FPL's 2012 NCRC recovery amount. (Jones, Derrickson, Powers)

**PEF:** PEF takes no position on this issue.

**OPC:** OPC takes no position, except to note that any amounts approved as reasonably estimated 2011 costs and estimated true-ups should be subject to the determination described in OPC's position on Issue 18.

**SACE:** No position.

**FIPUG:** This is a fall out amount from the substantive issues.

**PCS PHOSPHATE:** No position.

**FEA:** Agrees with FIPUG.

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

**ISSUE 14:** What system and jurisdictional amounts should the Commission approve as reasonably projected 2012 costs for FPL's EPU project?

**FPL:** The Commission should approve the amount of \$736,198,427 (system) in EPU expenditures and \$5,626,844 (system) in O&M costs as FPL's reasonably projected 2012 costs. The resultant jurisdictional costs, net of joint owner and other adjustments, are \$701,018,839 in EPU expenditures, \$67,264,453 in carrying charges, and \$5,461,197 in O&M costs. In addition, reasonable jurisdictional base rate revenue requirements are \$80,190,773. The total amount of \$152,916,422 should be included in setting FPL's 2012 NCRC recovery amount. FPL's 2012 projected construction expenditures are supported by comprehensive procedures, processes and controls which help ensure that these projected costs are reasonable. (Jones, Powers)

**PEF:** PEF takes no position on this issue.

**OPC:** OPC expresses no position, except to note that any amounts approved as reasonably projected 2012 costs for FPL's Extended Power Uprate projects should be subject to the determination described in OPC's position on Issue 18.

**SACE:** None.

**FIPUG:** This is a fall out amount from the substantive issues.

**PCS PHOSPHATE:** No position.

**FEA:** Agrees with FIPUG.

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

**ISSUE 15A:** Did FPL willfully withhold information concerning the estimated capital costs of its EPU project and its related long-term study of the feasibility of the EPU project that is required by rule 25-6.0423, F.A.C., and that the Commission needed to make an informed decision at the time of the September 2009 hearing in Docket No. 090009-EI?

**FPL:** No. As testified to by Armando Olivera, FPL's President and Chief Executive Officer, "FPL did not willfully withhold information that the Commission needed to make an informed decision during the September 2009 hearing in Docket No. 090009-EI."

FPL is required by Rule 25-6.0423 to provide information related to the prior year's actual nuclear project costs in March of each year, and an estimate of the current year and next year's projected costs in May of each year. FPL is also required to provide a feasibility analysis in May of each year. FPL fully complied with these obligations, presenting the best information it had available at the time of these filings and at the September 2009 hearing. Further, FPL fails to see any significance in the fact that an FPL witness was unaware of a sensitivity analysis that continued to show the EPU project as cost effective, a conclusion that was consistent with the analysis and testimony the witness presented to the Commission.

As to OPC's assertion that FPL had an obligation to update its testimony in September 2009, the testimony of FPL Witnesses Mr. Olivera, FPL's former Chief Nuclear Officer Mr. Stall, EPU Vice President Mr. Jones, as well as the deposition testimony of former EPU Vice President Mr. Kundalkar clearly show that the information OPC claims should have been provided was preliminary, unreliable, and incomplete. FPL simply did not have the information necessary to support a reliable update to its non-binding cost estimate in September 2009. Moreover, there is no obligation to provide this type of information as an update to testimony, as OPC seems to assert.

OPC's position lacks perspective. This is *not* a case where senior management had approved a new cost estimate but decided to not to submit it. Over the course of the year, between the time of FPL's May filing and the Commission's

September Nuclear Cost Recovery hearing, FPL continued to manage and execute the EPU project. FPL was provided with information from its EPC vendor indicating the need for staffing in the later years of the project at levels greater than had been previously estimated. This preliminary information was utilized by project controls personnel to create a project cost forecast, which was presented to the Executive Steering Committee on July 25, 2009.

Neither the vendor estimates nor the resulting cost forecast, however, had been accepted or approved by senior management. To the contrary – the Executive Steering Committee rejected that information, determining it was inaccurate and unreliable. The forecast did not capture additional reductions to the EPC vendor’s estimates that the Executive Steering Committee thought could be achieved – and were in fact achieved – by the end of the year. In other words, had the Commission been presented the “snapshot” of information that was presented internally in July 2009, it would have been proven inaccurate by December 2009. Additionally, the July 25, 2009 forecast failed to account for other cost reduction opportunities that existed at the time – including the opportunity to self-perform some or all of the EPC work and the opportunity to hire an additional EPC vendor to perform a portion of the EPC work – all of which was being actively considered by senior management in the third and fourth quarters of 2009 and none of which was reflected in the July 25, 2009 project controls forecast. As explained by FPL Witness Stall, major factors affecting the EPU total project cost estimate were in a state of flux in September of 2009. It is clear that FPL was not in a position to revise its non-binding cost estimate at that time. In fact, had FPL presented this information at the 2009 hearing, it would have been contrary to FPL’s process to ensure the disclosure of accurate and reliable information to external stakeholders, including the Commission.

The Commission did not need this unreliable information to make informed decisions in the 2009 docket. The 2009 NCR docket examined 2008 costs for prudence, 2009 and 2010 costs for reasonableness, and project feasibility. The information OPC claims should have been provided had *no* effect on the 2008, 2009, or 2010 costs that the Commission was reviewing. With respect to project feasibility, FPL performed a sensitivity analysis in July 2009 to examine the impacts of potential cost increases as well as potential unit output increases, and to determine whether the project would still be cost-effective for customers using these assumptions. The sensitivity analysis demonstrated that, even assuming higher costs *without* the potential for increased output, the EPU project remained solidly cost-effective for FPL’s customers. As a result, even if FPL had provided this information as some sort of “update” to its testimony, it would have provided no basis for a change to any of the Commission’s decisions. (Olivera, Stall, Jones, Sim)

**PEF:** PEF takes no position on this issue.

**OPC:** Yes. The evidence will show that, following the submission of FPL's prefiled testimony (including its estimate of capital costs and the long-term feasibility study that incorporated this estimate as a principal input) in May 2009, project managers increased their estimates of the cost to complete the EPU projects by some \$300 million in July 2009 and another \$144 million in August 2009. While FPL claims the higher figures were unvetted, the evidence will also show that the revised estimates had matured to the point that they took into account reductions that had been negotiated with the EPC contractor and also anticipated reductions in the scope of the EPU project. Despite the fact that project managers no longer regarded the May 2009 figures as current, and had even performed a revised feasibility analysis that incorporated updated information regarding both megawatt increases and estimates of capital costs (which analysis showed materially lower cost-effectiveness than the May 2009 study), FPL made no change to its May 2009 testimony prior to or during the September 9, 2009, evidentiary hearing, at which time FPL's witness on estimated capital costs adopted his prefiled testimony without change. No questions of corporate miscommunication or of a witness acting contrary to the directive of senior management exist. To the contrary, during the July-August time frame, FPL's witness on capital costs and FPL's senior management jointly made a conscious, deliberate decision to not update the May 2009 testimony. Further, at the time of the September hearing, FPL had not informed its witness on long-term feasibility of the EPU projects of the July 2009 revised feasibility analysis, and had not informed him or FPL's witness on capital costs (who had been assigned to a different job as of the end of July) that the uprate team had increased the estimate of capital costs again in August 2009. OPC submits these actions, or, more precisely, inactions, constitute a willful decision to withhold information from the Commission that it needed to perform its oversight and regulatory functions on an informed basis.

**SACE:** Adopts OPC's position.

**FIPUG:** Yes. It is clear from the evidence that at the time the FPL witness took the stand at the 2009 nuclear hearing and swore that his testimony was true and correct regarding the EPU project costs, the company knew that the information was inaccurate and willfully did not update its information to provide the Commission and parties with the information needed as to the EPU.

**PCS PHOSPHATE:** No position.

**FEA:** Agrees with FIPUG.

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

**ISSUE 15B:** If the answer is yes, does the Commission possess statutory and regulatory authority with which to address FPL's withholding of information?

**FPL:** As explained above, the answer to 15A is "no". FPL did not withhold information that the Commission needed to make an informed decision. Nonetheless, parties appear to be in disagreement as to whether FPL should have considered providing this information as some sort of an "update" at some point to the Commission.

The Commission's authority under State law to assess penalties against utilities is expressly limited to circumstances in which a utility has refused to comply with or willfully violated a lawful rule or order of the Commission, or a statute administered by the Commission. *See*, Section 366.095, F.S.; *see also* Section 350.127(1), F.S. FPL has fully complied with all applicable rules, orders, and statutes, including the Nuclear Cost Recovery Rule. That Rule requires FPL to file in May of each year a feasibility analysis as well as its nonbinding cost estimate, which FPL did. The management-vetted and approved estimate was the best information.

The terms of the Nuclear Cost Recovery Rule are clear. Nothing further is required than what the Company provided and OPC's contentions to the contrary are unfounded. The rule requires FPL annually to provide both budgeted and actual costs compared to the estimated in-service costs of the power plant as provided in the petition for need determination, or the revised estimated in-service costs. It is axiomatic that "budgets" are established by management. OPC should not be surprised, therefore, that FPL would insist that the in-service cost estimate be revised only upon review and acceptance by senior management. In this case, senior management reviewed and explicitly *rejected* the information that OPC contends FPL was required to disclose in September of 2009.

Reasonable minds may differ as to whether FPL or Mr. Kundalkar should have advised the Commission of the Bechtel-based figures that were being discussed by Senior Management (John Reed Direct Testimony at p. 47), whether FPL missed an "opportunity" to inform the Commission about cost estimates that were not fully vetted (Internal Controls Audit Staff report at p. 35), or whether, for reasons discussed by FPL witnesses Olivera, Stall, and Jones FPL properly concluded that the numbers were not yet reliable and that extensive negotiations needed to occur with Bechtel before revising its non-binding estimate (See e.g., Direct Testimony of Art Stall at pp. 4-5). FPL's decision reflected care and deliberation in assessment of cost information and management of the project for the benefit of its customers. FPL submits that such actions are what the Commission would expect of the Company – as opposed to unquestioning acceptance of vendor information – and is not behavior that should be penalized. But regardless of one's view on these points, there is no basis to conclude that FPL's decision constituted a willful violation of Rule 25-6.0423, F.A.C.

Of course, to the extent the Commission or Staff would like more frequent reporting of project information (in addition to the annual reporting provided for by Rule 25-6.0423 and the constant reporting provided through the discovery process), the Commission has the statutory authority to revise the NCRC rule, Rule 25-6.0423, or impose other reporting obligations on a going-forward basis. FPL has indicated through responses to discovery its willingness to participate in such a dialogue. (Legal)

**PEF:** PEF takes no position on this issue.

**OPC:** Yes. Section 366.095, F.S., empowers the Commission to impose a fine of not more than \$5,000 per day for each day that a violation continues on a regulated utility that refuses to comply with or willfully violates the requirements of a Commission rule or Commission order. In that regard, OPC notes that FPL failed to inform the Commission of the then current information during the presentation of September 9, 2009, and did not update its estimate of capital costs until May 3, 2010—a period of some 236 days. Commission Rule 25-6.0423(8)(f), F.A.C., requires a utility to submit annually an estimate of capital costs, revised as necessary to reflect changes from the amount presented during the proceeding on the “determination of need” for the project. Additionally, Rule 25-6.0423(5)(c)(5) requires the utility to submit annually a study of the long term feasibility of the project for which it seeks authority to collect costs. The utility meets these requirements officially when it sponsors the information during the evidentiary hearing that the Commission conducts in the proceeding on the nuclear cost recovery clause each year. If these provisions have any meaning at all, they require the utility to provide the best, most current information available at the time the utility presents it during the hearing. FPL deliberately did not do so.

**SACE:** Adopts OPC’s position.

**FIPUG:** Yes. The Commission has jurisdiction to take action regarding a regulated utility who willfully withholds information. Section 366.095, Florida Statutes, provides the Commission with the power to impose penalties upon a utility which has willfully violated any rule or order of the Commission. Rule 25-6.0423(5)(c)5, Florida Administrative Code, requires FPL to submit a long-term feasibility analysis regarding a nuclear plant. The Commission explained in Order No. PSC-08-0237-FOF-EI that such requirement includes the provision of “capital cost estimates.” Clearly, such costs estimates must be the current and most cost-effective information available. Further, when a witness takes the stand, the witness provides testimony under oath. Failure to provide true and correct testimony implicates the Commission’s authority to administer oaths. *See*, section 350.123, Florida Statutes.

**PCS PHOSPHATE:** No position.

**FEA:** Agrees with FIPUG.

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

**ISSUE 15C:** In light of the determinations in Issues 15A and 15B, what action, if any, should the Commission take?

**FPL:** Because FPL did not willfully withhold information that the Commission needed to make an informed decision, no action is necessary. (Legal)

**PEF:** PEF takes no position on this issue.

**OPC:** Pursuant to Section 366.095, F.S., the Commission has authority under the circumstances to impose a fine of up to \$1,180,000 (236 days X \$5,000 per day) for FPL's violation of Rule 25-6.0423, F.A.C. OPC urges the Commission to exercise its discretion and authority in a way that will communicate its insistence that utilities subject to its jurisdiction be forthright and transparent in their dealings with the Commission.

**SACE:** Adopts OPC's position.

**FIPUG:** Pursuant to Section 366.095, Florida Statutes, the Commission should impose a fine of \$1.18 million. This amount is based on the Commission's authority to impose a fine of \$5,000 per day.

**PCS PHOSPHATE:** No position.

**FEA:** Agrees with FIPUG.

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

**ISSUE 16:** Was it prudent for FPL to undertake the EPU projects at Turkey Point and St. Lucie on a "fast track" basis? [DISPUTED]

**FPL:** Yes. The fuel cost savings, improved fuel diversity, increased system reliability and emission reduction benefits to FPL's customers expected from putting the EPU project into service during the 2012 time frame clearly supports the prudence of FPL's 2007 decision to pursue the EPU project on an expedited or "fast track" approach.



In contrast, proceeding with the EPU project on a non-expedited schedule would have taken about six years longer, cost more than proceeding on an expedited basis, as well as have deprived FPL's customers of more than \$800 million in fuel cost savings, as compared with the expedited approach proposed by FPL in 2007 and approved by the Commission in its EPU project need determination order.

Moreover, FPL would not have proceeded with the EPU project on an expedited basis absent the confirmation provided by the Commission in its 2008 need determination order that the EPU project is subject to Florida's nuclear cost recovery regulatory framework. OPC's claim should therefore be rejected both as factually unfounded and representing poor regulatory policy directly in conflict with Florida's legislative policy of encouraging investment in additional nuclear generation to serve customers. (Olivera, Stall, Jones, Derrickson, Sim, Deason)

FPL notes that this issue and OPC's related testimony are subject to FPL's pending Motion to Strike. FPL's motion should be granted for several reasons, any one of which is legally sufficient to strike OPC's related testimony and together clearly compel rejection of OPC's claims:

- (i) OPC's claim that FPL's decision to implement the EPU project on an expedited or "fast track" basis was imprudent is a prohibited collateral attack on the Commission's 2008 need determination order approving FPL's 2007 proposal to undertake the EPU project on an expedited basis;
- (ii) OPC's position on this issue is a legally barred "hindsight" claim, and by attacking a 2007 FPL decision is also not within the scope of the present proceeding, which is limited to review of 2009 and 2010 FPL management decisions; and
- (iii) OPC's position challenging FPL's pursuit of the EPU project on an expedited basis is contrary to Section 403.519(4)(e), Florida Statutes, which states that "[p]roceeding with the construction of the nuclear or integrated gasification combined cycle power plant following an order by the commission approving the need for the nuclear or integrated gasification combined cycle power plant under this act shall not constitute or be evidence of imprudence."

**PEF:** PEF takes no position on this issue.

**OPC:** No. The term "fast track" is a term of art. It has a special meaning—one that goes beyond the notion of expediting or accelerating a schedule while adhering to normal and conventional project management procedures and tools, which include the full sequence of design engineering, followed by bidding and contract formation, followed by construction and implementation. These steps, followed in sequence (even if those steps are expedited), provide protection from unanticipated and uncontrolled increases in costs. "Fast tracking" involves instead a decision to sacrifice the normal controls and sequences, including the

completion of design engineering and the issuance of requests for binding bids based on price, and proceeding on a “time and materials”-only basis (because contractors will not accept the risk of set prices when proceeding in the absence of design specifications) so as to meet an in-service date that could not otherwise be met using the normal processes and sequences. “Fast tracking” involves conscious risk-taking, and the degree of risk increases with the complexity and uncertainty that the project presents. The EPU projects are hugely complex, and from the outset have involved massive uncertainty. FPL agrees that cost certainty increases as the process of design engineering progresses. FPL’s decision to “fast track” (such that processes, including design engineering, proceed in parallel instead of the normal sequence, in which design work is completed prior to implementation), has led to a situation in which estimates of the cost of EPU projects have increased from \$1.45 billion to the current \$2.07 billion (not including AFUDC or transmission), and design engineering of the EPU projects presently is only approximately 50% complete. OPC expert William Jacobs, who holds a Ph.D. in nuclear engineering and has 40 years of experience in the nuclear industry, will demonstrate that the decision to “fast track” the EPU projects was imprudent; that it was made when FPL had no clear grasp of the costs of the project; and that FPL continues to experience the consequences, in terms of higher costs, of its imprudent decision.

**SACE:** Adopts OPC’s position.

**FIPUG:** No. It was imprudent for FPL to attempt to fast track such a large and complicated action. Such a track has led to highly inaccurate cost and completion estimates. This approach commits FPL to spend large amounts of money before it knows the cost of the project. Such a track has led to highly inaccurate cost and completion estimates.

**PCS PHOSPHATE:** No position.

**FEA:** Agrees with FIPUG.

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

**ISSUE 17:** Was it prudent for FPL to undertake the EPU projects at Turkey Point and St. Lucie in the absence of a break-even calculation? [DISPUTED]

**FPL:** Yes. The CPVRR analysis approach used by FPL since 2007 and approved by the Commission each year since its 2008 determination of need is appropriate, and there is no need for a breakeven analysis. The breakeven approach recommended by OPC would restrict the breadth of the view by which the EPU project may be judged to a single scenario of fuel and environmental compliance

costs. An arbitrary breakeven standard would not be an improvement as compared to the current approach. (Deason, Sim)

FPL notes that this issue and OPC's related testimony are subject to FPL's pending Motion to Strike. FPL's motion should be granted for several reasons, any one of which is legally sufficient to strike OPC's related testimony and together clearly compel rejection of OPC's claims:

- (iv) OPC's claim that FPL's decision to undertake the EPU project without a break-even calculation is a prohibited collateral attack on the Commission's 2008 need determination order approving FPL's 2007 proposal to undertake the EPU project based on the CPVRR analysis results;
- (v) OPC's position on this issue is a legally barred "hindsight" claim, and by attacking a 2007 FPL decision is also not within the scope of the present proceeding, which is limited to review of 2009 and 2010 FPL management decisions; and
- (vi) OPC's position challenging FPL's pursuit of the EPU project is contrary to Section 403.519(4)(e), Florida Statutes, which states that "[p]roceeding with the construction of the nuclear or integrated gasification combined cycle power plant following an order by the commission approving the need for the nuclear or integrated gasification combined cycle power plant under this act shall not constitute or be evidence of imprudence."

**PEF:** PEF takes no position on this issue.

**OPC:** No. Given the degree of uncertainty that FPL faced when considering its EPU projects, FPL should have performed a break-even analysis to quantify the maximum amount it could spend on the EPU project per installed kW and continue to remain cost-effective for customers. The decision to undertake the EPU projects on a "fast track" basis was imprudent in and of itself; the imprudence was exacerbated by the decision not to quantify the "breakeven" amount per kW. Further, the break-even analysis was and remains a better methodology for measuring the long term feasibility of the EPU projects on a continuing basis.

**SACE:** Adopts OPC's position.

**FIPUG:** No. A break-even analysis is necessary to properly assess the cost-effectiveness of a project. FPL's NPVVR analysis overstates the cost-effectiveness of the project.

**PCS PHOSPHATE:** No position.

**FEA:** Agrees with FIPUG.

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

**ISSUE 18:** If the Commission finds FPL was imprudent in Issues 16 or 17, what action can and should the Commission take? [DISPUTED]

**FPL:** Because FPL's 2007 decisions were not imprudent, and because these 2007 decisions are not properly before the Commission for determination in this docket, no action is necessary. In any event, pursuant to Section 403.519(4)(e) and Section 366.93, Florida Statutes, FPL is entitled to recover all its prudently incurred costs. Accordingly, any proposed Commission action that would prevent the recovery of all prudently incurred costs would be contrary to Florida law. The Commission has already determined that a risk sharing mechanism that disallows costs over some pre-established threshold (such as a "break even" amount) is prohibited in last year's Nuclear Cost Recovery docket. (Deason)

FPL notes that this issue is subject to FPL's pending Motion to Strike.

**PEF:** PEF takes no position on this issue.

**OPC:** While the Florida Legislature intended to provide regulated utilities an incentive to add nuclear generating capacity to their systems, it did not write a blank check. The Florida Legislature entrusted the role of protecting customers to the Commission by providing that only prudently incurred costs be recovered through the Commission's cost recovery mechanism. Section 366.93(2), F.S.; Section 403.519(4)(e), F.S. In exercising that statutory role, the Commission must not lose sight of the forest by focusing on individual trees. The imprudence of FPL's decision to fast track the EPU projects is apparent now; the consequences of that imprudence, in the form of those certain costs that exceed those FPL would have incurred had it built a system without the EPU projects and with normal sequences and procedures, can be measured only when the full costs of each can be measured on a "breakeven" basis. The Commission should enter its finding of imprudence now, and reserve its ability to disallow any costs of EPU projects that exceed the "breakeven" amount at the time the results of the final such comparison are known.

**SACE:** Adopts OPC's position.

**FIPUG:** The Commission should disallow all imprudent costs.

**PCS PHOSPHATE:** No position.

**FEA:** Agrees with FIPUG.

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

**ISSUE 19:** What is the total jurisdictional amount to be included in establishing FPL's 2012 Capacity Cost Recovery Clause factor?

**FPL:** The total jurisdictional amount of \$196,092,631 should be included in establishing FPL's 2012 Capacity Cost Recovery Clause factor. This amount consists of carrying charges on site selection costs, pre-construction costs and associated carrying charges for continued development of Turkey Point 6 & 7; and carrying charges on construction costs, O&M costs and base rate revenue requirements, all as provided for in Section 366.93 and the Rule. (Powers)

**PEF:** PEF takes no position on this issue.

**OPC:** No position, except that OPC notes the amount should be subject to the mechanism for potential disallowance that OPC advocates in its position on Issue 18.

**SACE:** None.

**FIPUG:** This is a fall out amount from the substantive issues.

**PCS PHOSPHATE:** No position.

**FEA:** Agrees with FIPUG.

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

**ISSUE 20:** Should the Commission approve what PEF has submitted as its 2011 annual detailed analysis of the long-term feasibility of completing the Levy Units 1 & 2 project, as provided for in Rule 25-6.0423, F.A.C? If not, what action, if any, should the Commission take?

**FPL:** FPL takes no position on any of the issues identified for Progress Energy Florida.

**PEF:** Yes, the Commission should approve what PEF has submitted as its annual detailed analysis of the long-term feasibility of completing the LNP. With the testimony and exhibits of John Elnitsky, PEF submitted a detailed analysis setting forth the long term feasibility of completing the LNP, consistent with the requirements of Rule 25-6.0423 and the analysis this Commission originally approved in Docket No. 090009-EI. First, the Company employed a qualitative analysis of the technical and regulatory capability of completing the plants, the

risks, and the costs and benefits of completing the Levy nuclear power plants. As part of this analysis, the Company demonstrated that the LNP is feasible from a regulatory and technical perspective. The second step was an updated CPVRR economic analysis. The updated CPVRR indicates that the LNP is economically viable and has the potential to provide PEF and its customers with fuel and environmental cost savings over the life of the project. The Company has demonstrated that the LNP is feasible.

If the Commission does not approve what PEF has submitted as its annual detailed analysis of the long-term feasibility of completing the LNP based on a perceived technical deficiency in PEF's filing, the Commission should specifically identify the nature of its perceived deficiencies in PEF's analysis and permit PEF to re-file with the additional requested information.

If the Commission finds that PEF's filing is technically acceptable but that the LNP is not feasible going forward on substantive grounds, the Commission's determination would preclude the Company from completing the construction of the LNP and the Commission should award PEF cost recovery of its prudent 2010 costs and reasonable 2011 costs as well as reasonable project exit costs pursuant to Section 366.93(6). (Elnitsky)

**OPC:** No. There is insufficient evidence to support PEF's analysis of feasibility because the two key enterprise risks are trending against the cost effectiveness of the LNP project and there is substantial doubt that the LNP project will meet the 2021/2022 COD assumed in the feasibility analysis submitted by PEF. It appears that for the Commission to truly evaluate PEF's feasibility analysis, PEF would need to provide a feasibility analysis based upon a COD of 2027/2029 – some nineteen years after the need was determined by the Commission.

**SACE:** No. PEF has failed to complete, and properly analyze, a realistic feasibility assessment that properly takes into account important changes in key variables which have adversely impacted the feasibility of new nuclear reactors, including, but not limited to: declining natural gas costs; declining estimates of cost of carbon; other enterprise risks; impacts of Fukushima nuclear disaster; and the true impact of efficiency and renewables.

The Commission should deny cost recovery for PEF's 2011 and 2012 costs.

**FIPUG:** No. PEF has failed to demonstrate the long-term feasibility of completing the Levy Units 1 & 2. Requested costs should be disallowed.

**PCS PHOSPHATE:** Agrees with and adopts OPC's position.

**FEA:** Agrees with FIPUG.

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

**ISSUE 21:** What is the total estimated all-inclusive cost (including AFUDC and sunk costs) of the proposed Levy Units 1 & 2 nuclear project?

**FPL:** FPL takes no position on any of the issues identified for Progress Energy Florida.

**PEF:** The total estimated cost for the Levy Units 1 & 2 nuclear project including AFUDC and sunk costs as of 2011 is approximately \$22.5 billion. (Elnitsky, Foster)

**OPC:** The total estimated all-inclusive cost of the LNP is between \$22 and \$25 billion dollars based on an increasingly unlikely COD of 2021/2022. This estimated cost is not reasonable and likely exceeds the cost of other alternate generation sources especially if the COD is 2027/2029, in which case the estimated cost would likely be substantially greater due to escalation.

**SACE:** No position.

**FIPUG:** Given the scope and size of this undertaking, this information is critical to provide transparency to those who are paying for this enormous project. Further, the Commission must consider whether such expenditures make sense. This information is in the possession of PEF and should be provided to the Commission and ratepayers without objection.

**PCS PHOSPHATE:** Supports the position of OPC.

**FEA:** Agrees with FIPUG.

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

**ISSUE 22:** What is the estimated planned commercial operation date of the planned Levy Units 1 & 2 nuclear facility?

**FPL:** FPL takes no position on any of the issues identified for Progress Energy Florida.

**PEF:** The Levy Units 1 & 2 nuclear plants are estimated for commercial operation in 2021 for Unit 1 and eighteen months later in 2022 for Unit 2. (Elnitsky)

**OPC:** Evidence indicates that PEF is actively planning for a COD of 2029/2029. If this is in fact the most likely COD, then it is unreasonable to continue to allow

advanced cost recovery even under the “demonstration of intent” standard set out in Order No. PSC-11-0095-FOF-EI.

**SACE:** No position.

**FIPUG:** Given the scope and size of this undertaking, this information is critical to provide transparency to those who are paying for this enormous project. Further, the Commission must consider whether the commercial operation date make sense in view of the magnitude of the expenditures. This information is in the possession of PEF and should be provided to the Commission and ratepayers without objection.

**PCS PHOSPHATE:** Supports the position of OPC.

**FEA:** Agrees with FIPUG.

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

**ISSUE 23:** Do PEF’s activities to date related to Levy Units 1 & 2 qualify as “siting, design, licensing, and construction” of a nuclear power plant as contemplated by Section 366.93, F.S.?

**FPL:** FPL takes no position on any of the issues identified for Progress Energy Florida.

**PEF:** Yes. Section 366.93 of the Florida Statutes, clearly provides that all costs associated with siting, design, licensing, and construction of a nuclear power plant are recoverable. The statute further provides that “costs” which are recoverable by a utility include but are not limited to, “all capital investments, including rate of return, any applicable taxes, and all expenses, including operation and maintenance expenses, related to or resulting from the siting, licensing, design, construction, or operation of the nuclear power plant.” *See* Section 366.93(1)(a). This is an intentionally broadly worded statutory definition encompassing “all costs” for the underlying activities, namely, the “siting, licensing, design construction, or operation of the nuclear power plant.” On its face, then, the statute contemplates, and common sense dictates, that a utility will move through these stages concurrently but also in sequence at times over an ultimately unfixed time period -- from siting to ultimate construction. Costs for licensing activities for a nuclear power plant necessarily fall within recoverable costs under the statute whether those costs are incurred in isolation or in concert with costs for other activities for a nuclear power plant and its associated transmission facilities.

Moreover, the statute explicitly mandates that the Commission establish “alternative cost recovery mechanisms for the recovery of costs incurred in the siting, design, licensing, and construction of a nuclear power plant” ... and



contemplates expressly that “[s]uch mechanisms shall be designed to promote utility investment in nuclear...” *See id.* at subparagraph (2). An interpretation that recognizes that costs for licensing activities for a nuclear power plant are recoverable whether or not those costs are in connection with other activities for the nuclear power plant is consistent with this express legislative intent.

The LNP is an active project under an existing NRC licensing application and construction contract. PEF executed its Engineering, Procurement and Construction (“EPC”) contract with Westinghouse and Shaw, Stone & Webster (the “Consortium”), on December 31, 2008 to build two AP1000 nuclear power plants on a site in Levy County. As described in the direct testimony of Mr. Elnitsky and Ms. Hardison, all costs incurred by PEF in 2010 and projected for 2011 and 2012 for the LNP are specifically related to the siting, licensing and/or design of the Levy nuclear plants. These activities are consistent with the efforts to actively pursue the development and construction of a new nuclear power plant. That is in fact what PEF is doing. PEF has an EPC contract for the design and construction of the LNP that is still in effect. PEF amended that EPC contract to extend the partial suspension and slow down the project, a decision that the Commission determined was reasonable last year. PEF is implementing this decision this year with the present intent to build the LNP on the current project schedule. (Elnitsky, Hardison).

**OPC:** At this time it does not appear by the totality of circumstances that PEF is demonstrating the requisite intent to construct the LNP project as contemplated by Section 366.093, F.S. and Order No. PSC-11-0095-FOF-EI. PEF has not met its burden of demonstrating such an intent in light of the facts and circumstances contained in the testimony of Dr. William Jacobs and especially in the light of the August 2010 scenario planning exercise that produced a 2027/2029 COD for the LNP units 1 & 2, respectively. The scenario planning process calls into question the PEF-proffered CODs of 2021/2022. (Jacobs)

**SACE:** No. PEF’s activities to date fail to demonstrate the requisite intent to actually construct the LNP. Rather, PEF’s activities, as well as public statements made by PEF officials, demonstrate that PEF is engaged only in an attempt to obtain the requisite federal, state, and local licenses for the LNP. No final decision to proceed with construction of the LNP has been made.

**FIPUG:** No. PEF has not proven its intent to move forward with the project.

**PCS PHOSPHATE:** Agrees with and adopts OPC’s position.

**FEA:** Agrees with FIPUG.

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

**ISSUE 24:** Should the Commission find that for the year 2010, PEF's project management, contracting, accounting and cost oversight controls were reasonable and prudent for the Levy Units 1 & 2 project? If not, what action, if any, should the Commission take?

**FPL:** FPL takes no position on any of the issues identified for Progress Energy Florida.

**PEF:** Yes, for the year 2010, PEF's project management, contracting, accounting and oversight controls were reasonable and prudent for the LNP. These procedures are designed to ensure timely and cost-effective completion of the project. They include regular status meetings, both internally and with its vendors. These project management and oversight controls also include regular risk assessment, evaluation, and management. There are also adequate, reasonable policies regarding contracting procedures. The Company also has appropriate, reasonable project accounting controls, project monitoring procedures, disbursement services controls, and regulatory accounting controls. Pursuant to these controls, PEF regularly conducts analyses and reconciliations to ensure that proper cost allocations and contract payments have been made. (Garrett, Hardison, Elnitsky).

**OPC:** No position.

**SACE:** No.

**FIPUG:** No.

**PCS PHOSPHATE:** Agrees with and adopts OPC's position.

**FEA:** No.

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

**ISSUE 25:** What system and jurisdictional amounts should the Commission approve as PEF's final 2010 prudently incurred costs and final true-up amounts for the Levy Units 1 & 2 project?

**FPL:** FPL takes no position on any of the issues identified for Progress Energy Florida.

**PEF:** Capital Costs (System) \*\*\*\*\*; (Jurisdictional) \$79,917,103  
O&M Costs (System) \$2,877,079; (Jurisdictional) \$2,496,726  
Carrying Costs \$49,280,391 and Other Adjustments credit of \$5,302.

The over recovery of \$60,743,424 should be included in setting the allowed 2012 NCRC recovery.

The 2010 variance is the sum of over-projection preconstruction costs of \$58,175,233, plus an over-projection of O&M expenses of \$1,190,702 plus an over-projection of carrying costs of \$1,372,188, plus an under-projection of other adjustments costs of negative \$5,302. (Garrett, Hardison)

**OPC:** No position.

**SACE:** Agrees with FIPUG.

**FIPUG:** This is a fall out amount from the substantive issues.

**PCS PHOSPHATE:** Agrees with and adopts OPC's position.

**FEA:** Agrees with FIPUG.

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

**ISSUE 26:** WITHDRAWN.

**ISSUE 27A:** Is it reasonable for PEF to incur any estimated 2011 costs not necessary for receipt of the combined operating license (COL), and if not, what action, if any, should the Commission take?

**FPL:** FPL takes no position on any of the issues identified for Progress Energy Florida.

**PEF:** Yes. Under the nuclear cost recovery statute and rule PEF is entitled to recover all reasonably incurred costs. No intervenor has challenged the reasonableness of any LNP 2011 costs as not necessary for the project or unreasonable in amount estimated, therefore, PEF is entitled to recover all of its estimated 2011 LNP costs.

Issue 27A further suggests on its face that the Commission may disapprove cost recovery for costs reasonably incurred for the siting, design, engineering, or construction of new nuclear power plants, which it cannot do. In fact, the Commission would be acting in contravention to the applicable rule and statute by disapproving costs for all aspects of the development of new nuclear power plant capacity, other than the licensing costs necessary to obtain the LNP COL, even if those costs are reasonable for the LNP.

There is no evidence that any non-COL LNP costs are unreasonable because they are not necessary for the LNP or, if necessary, that they are unreasonable in amount. In fact, the only testimony on this issue is from Mr. Elnitsky that all 2011 actual/estimated costs are reasonable and necessary to proceed with the

LNP. The Commission cannot disallow cost recovery of reasonable costs for new nuclear power plant capacity under Rule 25-6.0423(5)(c)2, F.A.C. The Commission is required by rule to determine the reasonableness of estimated LNP costs and, if they are found to be reasonable, include them in setting the Capacity Cost Recovery Clause factor in the annual Fuel and Purchased Power Cost Recovery proceedings. Rule 25-6.0423(5)(c)3, F.A.C. To do otherwise would constitute an arbitrary and capricious ruling, subject to reversal on appeal.

In addition, in the 2010 NCRC docket the Commission determined that PEF's decision to proceed with the LNP on a slower pace is reasonable. See Order No. PSC-11-0095-FOF-EI, Docket No. 100009-EI, p. 35 (Feb. 2, 2011). This is exactly what the Company is incurring costs for in 2011 and projects to incur costs for in 2012. OPC's witness Jacobs agreed in deposition that the Commission determined that the Company's decision to proceed with the LNP is reasonable and that this decision did not limit the recovery of costs incurred as a result of that decision in any way. Intervenors contest the Commission's prior decision and revisit it by asserting that otherwise reasonable costs for the LNP should not be recovered because cost recovery should be limited to only those costs related to the LNP COL. No party challenged the Commission's determination that PEF's decision to proceed with the LNP is reasonable by appealing that decision. Therefore, no intervenor should be allowed to collaterally attack that determination by requesting the Commission to limit the recovery of reasonable costs incurred by the Company's implementation of that decision. (Elnitsky)

**OPC:** No. Cost recovery should not be allowed for any costs not demonstrated by PEF as being necessary for achieving the only COL. The increasing uncertainty surrounding the LNP project requires that customers not be saddled with transmission related costs, Full Notice To Proceed or (FNTP) negotiation costs, or any other non-COL achievement costs for which the Company has not already legally obligated itself. (Jacobs)

**SACE:** No. PEF's activities to date fail to demonstrate the requisite intent to actually construct the LNP. As such, PEF is not engaged in the "siting, design, licensing, and construction" of a nuclear power plant. Given this failure to demonstrate the requisite intent to construct the LNP, as well as the failure to demonstrate the feasibility of the same, the Commission should not approve recovery of any estimated 2011 costs not necessary for receipt of the COL.

**FIPUG:** PEF should not be able to recover any estimated costs that are not related to receipt of the combined operating license (COL). PEF has failed to demonstrate an intent to proceed with the project.

**PCS PHOSPHATE:** Agrees with and adopts OPC's position.

**FEA:** It is not reasonable for PEF to incur any estimated or projected costs not necessary for receipt of the combined license (COL), and the Commission should not allow recovery for any unnecessary costs.

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

**ISSUE 27B:** What system and jurisdictional amounts should the Commission approve as reasonable actual/estimated 2011 costs and estimated true-up amounts for PEF's Levy Units 1 & 2 project?

**FPL:** FPL takes no position on any of the issues identified for Progress Energy Florida.

**PEF:** Position (A): Consistent with PEF's May 2, 2011 Filing:

Capital Costs (System) \*\*\*\*\*; (Jurisdictional) \$72,747,008  
O&M Costs (System) \$1,557,765; (Jurisdictional) \$1,414,419  
Carrying Costs \$48,372,525.

The Commission should also approve an estimated 2011 LNP project true-up under recovery amount of \$5,775,063 to be included in setting the allowed 2012 NCRC recovery.

The 2011 variance is the sum of an under-projection of Preconstruction costs of \$6,190,953, plus an over-projection of O&M expenses of \$2,409,464 plus an under-projection of carrying charges of \$1,993,574. (Foster, Hardison, Elnitsky).

Position (B): Consistent with PEF's response to Staff POD 1 Question 3:

Capital Costs (System) \*\*\*\*\*; (Jurisdictional) \$72,747,008  
O&M Costs (System) \$1,557,765; (Jurisdictional) \$1,414,573  
Carrying Costs \$48,372,525.

The Commission should also approve an estimated 2011 LNP project true-up amount of \$5,775,217 to be included in setting the allowed 2012 NCRC recovery.

The 2011 variance is the sum of an under-projection of Preconstruction costs of \$6,190,953, plus an over-projection of O&M expenses of \$2,409,310 plus an under-projection of carrying charges of \$1,993,574. (Foster, Hardison, Elnitsky)

**OPC:** The Commission should approve only those actual/estimated 2011 costs and estimated true-up amounts that PEF demonstrated is necessary for achieving the COL. All other amounts should be denied. (Jacobs)

**SACE:** None. PEF has not demonstrated that completion of the Levy Units 1 & 2 is feasible in the long-term as required by Rule 25-6.0423(5)(c)5, F.A.C., therefore no such costs could be reasonably estimated and/or incurred.

**FIPUG:** This is a fall out amount from the substantive issues.

**PCS PHOSPHATE:** Agrees with and adopts OPC's position.

**FEA:** Agrees with FIPUG.

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

**ISSUE 28A:** Is it reasonable for PEF to incur any projected 2012 costs not necessary for receipt of the combined operating license (COL), and if not, what action, if any, should the Commission take?

**FPL:** FPL takes no position on any of the issues identified for Progress Energy Florida.

**PEF:** Yes. Under the nuclear cost recovery statute and rule PEF is entitled to recover all reasonably incurred costs. No intervenor has challenged the reasonableness of any LNP projected 2012 cost as not necessary for the project or unreasonable in amount estimated, therefore, PEF is entitled to recover all of its estimated 2012 LNP costs.

Issue 28A further suggests on its face that the Commission may disapprove cost recovery for costs reasonably incurred for the siting, design, engineering, or construction of new nuclear power plants, which it cannot do. In fact, the Commission would be acting in contravention to the applicable rule and statute by disapproving costs for all aspects of the development of new nuclear power plant capacity, other than the licensing costs necessary to obtain the LNP COL, even if those costs are reasonable for the LNP.

There is no evidence that any non-COL LNP costs are unreasonable because they are not necessary for the LNP or, if necessary, that they are unreasonable in amount. In fact, the only testimony on this issue is from Mr. Elnitsky that all 2012 projected costs are reasonable and necessary to proceed with the LNP. The Commission cannot disallow cost recovery of reasonable costs for new nuclear power plant capacity under Rule 25-6.0423(5)(c)2, F.A.C. The Commission is required by rule to determine the reasonableness of projected LNP costs and, if they are found to be reasonable, include them in setting the Capacity Cost Recovery Clause factor in the annual Fuel and Purchased Power Cost Recovery proceedings. Rule 25-6.0423(5)(c)3, F.A.C. To do otherwise would constitute an arbitrary and capricious ruling, subject to reversal on appeal.

In addition, in the 2010 NCRC docket the Commission determined that PEF's decision to proceed with the LNP on a slower pace is reasonable. See Order No. PSC-11-0095-FOF-EI, Docket No. 100009-EI, p. 35 (Feb. 2, 2011). This is exactly what the Company projects to incur costs for in 2012. OPC's witness Jacobs agreed in deposition that the Commission determined that the Company's decision to proceed with the LNP is reasonable and that this decision did not limit the recovery of costs incurred as a result of that decision in any way. Intervenors contest the Commission's prior decision and revisit it by asserting that otherwise reasonable costs for the LNP should not be recovered because cost recovery should be limited to only those costs related to the LNP COL. No party challenged the Commission's determination that PEF's decision to proceed with the LNP is reasonable by appealing that decision. Therefore, no intervenor should be allowed to collaterally attack that determination by requesting the Commission to limit the recovery of reasonable costs projected to be incurred by the Company's implementation of that decision. (Elnitsky)

**OPC:** No. Cost recovery should not be allowed for any costs not demonstrated by PEF as being necessary for achieving the only COL. The increasing uncertainty surrounding the LNP project requires that customers not be saddled with transmission related costs, Full Notice To Proceed or (FNTP) negotiation costs, or any other non-COL achievement costs for which the Company has not already legally obligated itself. (Jacobs)

**SACE:** No. PEF's activities to date fail to demonstrate the requisite intent to actually construct the LNP. As such, PEF is not engaged in the "siting, design, licensing, and construction" of a nuclear power plant. Given this failure to demonstrate the requisite intent to construct the LNP, as well as the failure to demonstrate the feasibility of the same, the Commission should not approve recovery of any projected 2012 costs not necessary for receipt of the COL.

**FIPUG:** PEF should not be able to recover any projected costs that are not related to receipt of the combined operating license (COL). PEF has failed to demonstrate an intent to proceed with the project.

**PCS PHOSPHATE:** Agrees with and adopts OPC's position.

**FEA:** It is not reasonable for PEF to incur any estimated or projected costs not necessary for receipt of the combined license (COL), and the Commission should not allow recovery for any unnecessary costs.

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

**ISSUE 28B:** What system and jurisdictional amounts should the Commission approve as reasonably projected 2012 costs for PEF's Levy Units 1 & 2 project?

**FPL:** FPL takes no position on any of the issues identified for Progress Energy Florida.

**PEF:** Position (A): Consistent with PEF's May 2, 2011 Filing:

Capital Costs (System) \*\*\*\*\*; (Jurisdictional) \$39,583,863  
O&M Costs (System) \$1,545,388; (Jurisdictional) \$1,404,922  
Carrying Charges \$48,466,132. (Foster, Hardison)

Position (B): Consistent with PEF's response to Staff POD 1 Question 3:

Capital Costs (System) \*\*\*\*\*; (Jurisdictional) \$39,583,863  
O&M Costs (System) \$1,545,388; (Jurisdictional) \$1,405,073  
Carrying Charges \$48,466,132. (Foster, Hardison, Elnitsky)

**OPC:** The Commission should approve only those projected 2012 costs that PEF demonstrates are necessary for achieving the COL. All other amounts should be denied.

**SACE:** None. PEF has not demonstrated that completion of the Levy Units 1 & 2 is feasible in the long-term as required by Rule 25-6.0423(5)(c)5, F.A.C., therefore no such costs could be reasonably projected and/or incurred.

**FIPUG:** This is a fall out amount from the substantive issues.

**PCS PHOSPHATE:** Agrees with and adopts OPC's position.

**FEA:** Agrees with FIPUG.

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

**ISSUE 29:** Should the Commission approve what PEF has submitted as its 2011 annual detailed analysis of the long-term feasibility of completing the CR3 EPU project, as provided for in Rule 25-6.0423, F.A.C? If not, what action, if any, should the Commission take?

**FPL:** FPL takes no position on any of the issues identified for Progress Energy Florida.

**PEF:** This issue is the subject of PEF's pending Motion for Deferral. The Commission should defer consideration of the long-term feasibility of completing the CR3 Uprate project until the 2012 NCRC docket, to allow the Commission, its Staff, and the Intervenors more time to fully analyze and engage in discovery regarding the updated feasibility analysis that will later be completed. PEF also incorporates its Motion herein by reference. However, at the time PEF filed its testimony on



May 2, 2011, its long-term feasibility analysis was accurate and the 2011 and 2012 costs were reasonable. (Franke)

**OPC:** No. The Commission should grant PEF's Motion to Defer, and defer consideration of this issue until an appropriate NCRC hearing cycle.

**SACE:** Adopts OPC's position.

**FIPUG:** No. The information is inaccurate and not reflective of current circumstances. No costs should be allowed for this project.

**PCS PHOSPHATE:** Agrees with and adopts OPC's position.

**FEA:** Agrees with FIPUG.

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

**ISSUE 30:** STRICKEN.

**ISSUE 31:** For the years 2009 and 2010, should the Commission find PEF reasonably and prudently managed its CR3 EPU license amendment request? If not, what dollar impact did these activities have on 2009 and 2010 incurred costs?

**FPL:** FPL takes no position on any of the issues identified for Progress Energy Florida.

**PEF:** Yes, the Commission should find that PEF reasonably and prudently managed its CR3 Uprate license amendment request in 2009 and 2010. Any inadequate management of the LAR development in 2009 resulted in no dollar impact on 2009 or 2010 CR3 Uprate project incurred costs because AREVA fixed its quality issues at its own cost, PEF needed to spend more money, not less, on its LAR, and PEF prudently spent that money to prepare an EPU LAR document that met NRC acceptance review requirements. The costs in AREVA Change Order Number 23 were incurred to produce a high quality CR3 EPU LAR document that met NRC acceptance review requirements and, thus, these change order costs were necessary, unavoidable, and prudently incurred. PEF is entitled to recover the costs it incurred to prepare the CR3 EPU LAR document for acceptance review by the NRC. (Franke)

**OPC:** No. The Commission should disallow the multi-million dollar number contained in bullet 5 on page 1 of the July 2011 Staff Audit Report. The revenue requirement associated with this amount should be refunded to the customers who over-paid for PEF's mismanagement of the CR3 Uprate LAR.

**SACE:** Adopts OPC's position.

**FIPUG:** Agrees with OPC.

**PCS PHOSPHATE:** Agrees with and adopts OPC's position.

**FEA:** Agrees with OPC.

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

**ISSUE 32:** Should the Commission find that for 2010, PEF's project management, contracting, accounting and cost oversight controls were reasonable and prudent for the CR3 EPU project? If not, what action, if any, should the Commission take?

**FPL:** FPL takes no position on any of the issues identified for Progress Energy Florida.

**PEF:** Yes, PEF's project management, contracting, accounting and cost oversight controls were reasonable and prudent for the CR3 Uprate. These procedures are designed to ensure timely and cost-effective completion of the project. They include regular status meetings, both internally and with its vendors. These project management and oversight controls also include regular risk assessment, evaluation, and management. There are also adequate, reasonable policies regarding contracting procedures. The Company also has appropriate, reasonable project accounting controls, project monitoring procedures, disbursement services controls, and regulatory accounting controls. Pursuant to these controls, PEF regularly conducts analyses and reconciliations to ensure that proper cost allocations and contract payments have been made. (Garrett, Franke).

**OPC:** No position. Inasmuch as these decisions will be reviewed by the Commission in Docket No. 100437-EI, no position.

**SACE:** No.

**FIPUG:** No.

**PCS PHOSPHATE:** Agrees with and adopts OPC's position.

**FEA:** Agrees with FIPUG.

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

**ISSUE 33:** What system and jurisdictional amounts should the Commission approve as PEF's 2009 and 2010 prudently incurred costs and final true-up-amount for the CR3 EPU project?

**FPL:** FPL takes no position on any of the issues identified for Progress Energy Florida.

**PEF:** 2009:

Capital Costs (System) \$118,140,493; (Jurisdictional, net of joint owners) \$87,458,545

O&M Costs (System) \$821,773; (Jurisdictional, net of joint owners) \$762,529  
Carrying Costs \$14,351,595 and a base revenue requirement of \$396,018.

The over recovery of \$244,765 should be included in setting the allowed 2011 NCRC recovery. The 2009 variance is the sum of an O&M over-projection of \$9,999, under-projection of carrying charges of \$122,005 and an over-projection of adjustments of \$356,771. (Garrett, Franke)

2010:

Capital Costs (System) \$45,544,492; (Jurisdictional, net of joint owners) \$40,179,535

O&M Costs (System) \$917,972; (Jurisdictional, net of joint owners) \$823,467  
Carrying Costs \$10,106,450 and a base revenue requirement credit of \$2,901,536.

The under recovery of \$108,602 should be included in setting the allowed 2012 NCRC recovery. The 2010 variance is the sum of an O&M over-projection of \$286,017, under-projection of carrying charges of \$2,549,380 and an over-projection of other adjustments of \$2,154,760. (Garrett, Franke).

**OPC:** No position.

**SACE:** None.

**FIPUG:** Zero. The prudence of these costs is the subject of Docket No. 100437-EI.

**PCS PHOSPHATE:** Agrees with and adopts OPC's position.

**FEA:** Agrees with FIPUG.

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

**ISSUE 34:** What system and jurisdictional amounts should the Commission approve as reasonable actual/estimated 2011 costs and estimated true-up amounts for PEF's CR3 EPU project?

**FPL:** FPL takes no position on any of the issues identified for Progress Energy Florida.

**PEF:** This issue is the subject of PEF's pending Motion for Deferral. The Commission should defer consideration of the reasonableness of PEF's actual/estimated 2011 costs until the 2012 NCRC docket, to allow the Commission, its Staff, and the Intervenor more time to fully analyze and engage in discovery regarding the updated cost projections for the CR3 Uprate project that will likely be later completed. PEF also incorporates its Motion herein by reference. However, at the time PEF filed its testimony on May 2, 2011, its 2011 actual/estimated costs were reasonable. (Franke)

Position (A): Consistent with PEF's May 2, 2011 Filing:

Capital Costs (System) \$94,283,759; (Jurisdictional, net of joint owners) \$49,973,404

O&M Costs (System) \$514,991; (Jurisdictional, net of joint owners) \$476,134  
Carrying Costs \$15,962,233 and a base revenue requirement credit of \$3,176,396.

The Commission should also approve an estimated 2011 EPU project true-up over recovery of \$609,715 to be included in setting the allowed 2012 NCRC recovery. The 2011 variance is the sum of an O&M under-projection of \$53,041, plus an under-projection of carrying charges of \$5,938,404 plus an over-projection of other adjustments of \$6,601,160. (Foster, Franke)

Position (B): Consistent with PEF's motion for deferral filed July 1, 2011, which used PEF's response to Staff POD 1 Question 3 as the basis for the Revenue Requirement calculation updated for changes as identified in the motion: PEF is not requesting a review of reasonableness of capital spend at this time.

O&M Costs (System) \$0; (Jurisdictional, net of joint owners) \$75 prior period credit.  
Carrying Costs \$12,920,780 and a base revenue requirement credit of \$3,176,396.

The Commission should also approve an estimated 2011 EPU project true-up over recovery of \$4,127,377 to be included in setting the allowed 2012 NCRC recovery. The 2011 variance is the sum of an O&M over-projection of \$423,168, plus an under-projection of carrying charges of \$2,896,951 plus an over-projection of other adjustments of \$6,601,160. (Foster, Franke)

**OPC:** Zero. Due to the pending prudence determination in Docket No. 100437-EI and due to the fact that PEF has effectively suspended its uprate pending the outcome of its repair decision, the Commission should refrain from approving as prudent any of these costs. See also OPC position on Issue A.

**SACE:** None.

**FIPUG:** Agrees with OPC.

**PCS PHOSPHATE:** Agrees with and adopts OPC's position.

**FEA:** Agrees with FIPUG.

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

**ISSUE 35:** What system and jurisdictional amounts should the Commission approve as reasonably projected 2012 costs for PEF's CR3 EPU project?

**FPL:** FPL takes no position on any of the issues identified for Progress Energy Florida.

**PEF:** This issue is the subject of PEF's pending Motion for Deferral. The Commission should defer consideration of the reasonableness of PEF's projected 2012 costs until the 2012 NCRC docket, to allow the Commission, its Staff, and the Intervenor more time to fully analyze and engage in discovery regarding the updated cost projections for the CR3 Uprate project that will likely be later completed. PEF also incorporates its Motion herein by reference. However, at the time PEF filed its testimony on May 2, 2011, its 2012 costs were reasonable. (Franke)

Position (A): Consistent with PEF's May 2, 2011 Filing:

Capital Costs (System) \$87,473,540; (Jurisdictional, net of joint owners) \$84,315,552

O&M Costs (System) \$473,203; (Jurisdictional, net of joint owners) \$436,937  
Carrying Costs \$25,565,707 and a base revenue requirement credit of \$3,261,939  
(Foster, Franke)

Position (B): Consistent with PEF's motion for deferral filed July 1, 2011, which used PEF's response to Staff POD 1 Question 3 as the basis for the Revenue Requirement calculation updated for changes as identified in the motion: PEF is not requesting a review of reasonableness of capital spend at this time.

O&M Costs (System) \$0; (Jurisdictional, net of joint owners) \$710 prior period credit.

Carrying Costs \$12,875,746 and a base revenue requirement credit of \$3,261,939 (Foster, Franke)

**OPC:** Zero. Due to the pending prudence determination in Docket No. 100437-EI and due to the fact that PEF has effectively suspended its uprate pending the outcome of its repair decision, the Commission should refrain from approving as prudent any of these costs. See also OPC position on Issue A.

**SACE:** Adopts OPC's position.

**FIPUG:** Agrees with OPC.

**PCS PHOSPHATE:** Agrees with and adopts OPC's position.

**FEA:** Agrees with FIPUG.

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

**ISSUE 36:** What amount from the deferred balance of the Rate Management Plan approved in Order No. PSC-09-0783-FOF-EI should the Commission approve for recovery in 2012?

**FPL:** FPL takes no position on any of the issues identified for Progress Energy Florida.

**PEF:** PEF's proposed LNP rate management plan should be approved by the Commission because it appropriately balances the current and future rate impacts to customers from the current and expected investment in the LNP consistent with the intent of the Commission's Order approving the LNP rate management plan. For 2012, PEF is requesting the Commission approve recovery of the amortization of \$115 million of the remaining deferred balance as well as the associated carrying costs of \$15.1 million. As stated on page 46 of Order PSC-11-0095-FOF-EI, these amounts have already been approved for recovery but deferred in an effort to manage annual rate impacts. (Foster, Elnitsky).

**OPC:** No more than \$60 million. (Jacobs)

**SACE:** Adopts OPC's position.

**FIPUG:** Agrees with OPC.

**PCS PHOSPHATE:** Agrees with and adopts OPC's position.

**FEA:** Agrees with FIPUG.

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

**ISSUE 37:** What is the total jurisdictional amount to be included in establishing PEF's 2012 Capacity Cost Recovery Clause factor?

**FPL:** FPL takes no position on any of the issues identified for Progress Energy Florida.

**PEF:** This issue is impacted by PEF's pending Motion for Deferral. The Commission should defer consideration of the reasonableness of PEF's CR3 Uprate project actual/estimated 2011 costs and projected 2012 costs until the 2012 NCRC docket, to allow the Commission, its Staff, and the Intervenors more time to fully analyze and engage in discovery regarding the updated cost projections for the CR3 Uprate project that will likely be later completed. PEF also incorporates its Motion herein by reference. However at the time PEF filed its testimony on May 2, 2011 its CR3 Uprate project 2011 and 2012 costs were reasonable. (Franke).

Position (A): Consistent with PEF's May 2, 2011 Filing:

The total jurisdictional amount to be included in establishing PEF's 2012 Capacity Cost Recovery Clause factor should be \$157,564,361 (before revenue tax multiplier). Please see Appendix A below for a breakout of these costs. (Foster)

Position (B): Consistent with PEF's motion for deferral filed July 1, 2011, which used PEF's response to Staff POD 1 Question 3 as the basis for the Revenue Requirement calculation updated for changes as identified in the motion:

The total jurisdictional amount to be included in establishing PEF's 2012 Capacity Cost Recovery Clause factor should be \$140,919,397 (before revenue tax multiplier). Please see Appendices A & B below for a breakout of these costs. (Foster)

**APPENDIX A**

| <b>PEF - Total Jurisdictional Amount for 2012 Capacity Cost Recovery Clause Factor Summary</b>   |                                   |   |  |
|--|-----------------------------------|---|--|
|  |                                   | <b>(A)</b>  | <b>(B) *</b>                           |
| <b>TOPIC</b>   |                                   | Reference: PEF March 1 & May 2, 2011 NCRC Filings | Reference: Pending Motion July 1, 2011 |
| <b>CR 3 Uprate</b>   |                                   |   |  |
|  | CR3 Uprate 2010 Final True-up     | \$ 108,602  | \$ 108,602                             |
|  | CR3 Uprate 2011 Estimated True-up | (609,715)   | (4,127,377)                            |
|  | CR3 Uprate 2012 Projections       | 22,740,705  | 9,613,098                              |
|  | CR3 Uprate Subtotal               | \$ 22,239,592                                     | \$ 5,594,323                           |
|  | Rev Tax Multiplier                | 1.00072   | 1.00072                                |
| <b>CR3 Uprate Total</b>  |                                   | <b>\$ 22,255,605</b>                              | <b>\$ 5,598,350</b>                    |
|  |                                   |   |  |
| <b>Levy Nuclear Project</b>  |                                   |   |  |
|  | Levy 2010 Final True-up           | \$ (60,743,424)                                   | \$ (60,743,424)                        |
|  | Levy 2011 Estimated True-up       | 5,775,063   | 5,775,217                              |
|  | Levy 2012 Projections             | 75,324,768  | 75,324,920                             |
| Amortization of Reg Asset  |                                   | 114,968,361                                       | 114,968,361                            |
|  | Levy Subtotal                     | \$ 135,324,768                                    | \$ 135,325,074                         |
|  | Rev Tax Multiplier                | 1.00072   | 1.00072                                |
| <b>Levy Total</b>  |                                   | <b>\$ 135,422,202</b>                             | <b>\$ 135,422,508</b>                  |
|  |                                   |   |  |
| <b>NCRC Subtotal Amount</b>  |                                   | \$ 157,564,361                                    | \$ 140,919,397                         |
|  | Rev Tax Multiplier                | 1.00072   | 1.00072                                |
| <b>NCRC Total Amount</b>   |                                   | <b>\$ 157,677,807</b>                             | <b>\$ 141,020,859</b>                  |
|  |                                   |   |  |
| * Staff POD 1 Q3 was used as basis for the Revenue Requirement calculation and updated for changes as identified in the July 1, 2011 motion. |                                   |   |  |



**APPENDIX B**

| <b>Issue 37 Detailed Support</b>   |                     |                         |                       |                  |
|--|---------------------|-------------------------|-----------------------|------------------|
| <b>CR3 2012 Uprate Revenue Requirement Summary - Assuming PEF's Deferral is Approved (CR3 Uprate Scenario B)</b> |                     |                         |                       |                  |
|  | <b>2010 True Up</b> | <b>2011 A/E True Up</b> | <b>2012 Projected</b> | <b>Total</b>     |
| O&M  | (286,018)           | (423,168)               | (710)                 | (709,896)        |
| Carrying Costs   | 2,549,380           | 2,896,951               | 12,875,747            | 18,322,078       |
| Other Adjustments  | (2,154,760)         | (6,601,160)             | (3,261,939)           | (12,017,859)     |
| <b>Total CR3 Uprate 366.93 Revenue Requirements</b>  | <b>108,602</b>      | <b>(4,127,377)</b>      | <b>9,613,098</b>      | <b>5,594,323</b> |

| <b>Levy 2012 PEF Levy 1 &amp; 2 Revenue Requirement Summary Assuming LNP Scenario B</b> |                     |                         |                       |                    |
|---|---------------------|-------------------------|-----------------------|--------------------|
|   | <b>2010 True Up</b> | <b>2011 A/E True Up</b> | <b>2012 Projected</b> | <b>Total</b>       |
| Site Selection & Preconstruction  | (58,175,233)        | 6,190,953               | 25,453,715            | (26,530,565)       |
| O&M   | (1,190,702)         | (2,409,310)             | 1,405,073             | (2,194,939)        |
| Carrying Costs  | (1,372,187)         | 1,993,574               | 48,466,131            | 49,087,518         |
| Other   | (5,302)             | -                       | -                     | (5,302)            |
| <b>Total Levy 366.93 Revenue Requirements</b>   | <b>(60,743,424)</b> | <b>5,775,217</b>        | <b>75,324,920</b>     | <b>20,356,713</b>  |
| Plus: 2012 Amortization of Proposed Deferral  |                     |                         | 114,968,361           | 114,968,361        |
| <b>Proposed Levy Revenue Requirements for 2012 CCRC</b>                                 |                     |                         |                       | <b>135,325,074</b> |

|  |                    |
|--|--------------------|
| <b>Proposed NCRC Revenue Requirements for 2012 CCRC (After Revenue Tax Multiplier)</b> | <b>141,020,859</b> |
|--|--------------------|

**OPC:** Only those costs which PEF has affirmatively shown are absolutely necessary for receipt of the COL for the LNP and no more than \$60 million from the Rate Management Plan should be included. No other LNP should be included in PEF's 2012 Capacity Cost Recovery Clause factor. Therefore, the amount requested by PEF should be reduced accordingly. (Jacobs) No recovery should be allowed for the revenue requirement associated with any disallowance associated with PEF's CR3 LAR uprate management.

**SACE:** Agrees with OPC.

**FIPUG:** Agrees with OPC.

**PCS PHOSPHATE:** Supports the position of OPC.

**FEA:** Agrees with OPC.

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

IX. EXHIBIT LIST

**FLORIDA POWER & LIGHT COMPANY**

| <u>Witness</u>                     | <u>Proffered By</u> | <u>Exhibit</u> | <u>Description</u>   |
|------------------------------------|---------------------|----------------|--|
| <u>Direct</u>                      |                     |                |  |
| Steven D. Scroggs<br>Winnie Powers | FPL                 | SDS-1          | Turkey Point 6 & 7 Pre-Construction Costs Nuclear Filing Requirements (NFRs) T-Schedules January 2009 - December 2009                  |
| Steven D. Scroggs<br>Winnie Powers | FPL                 | SDS-2          | Turkey Point 6, 7 Preconstruction Costs Nuclear Filing Requirements (NFRs) AE-Schedules (Actual/Estimate) January 2010 – December 2010 |
| Steven D. Scroggs<br>Winnie Powers | FPL                 | SDS-3          | Turkey Point 6 & 7 Pre-Construction Costs Nuclear Filing Requirements (NFRs) T-Schedules January 2010 - December 2010                  |

| <u>Witness</u>                     | <u>Proffered By</u> | <u>Exhibit</u> | <u>Description</u>   |
|------------------------------------|---------------------|----------------|--|
| Steven D. Scroggs<br>Winnie Powers | FPL                 | SDS-4          | Turkey Point 6 & 7 Site<br>Selection Costs<br>T-Schedules January 2010 -<br>December 2010  |
| Steven D. Scroggs<br>Winnie Powers | FPL                 | SDS-5          | Turkey Point 6 & 7 Site<br>Selection Costs<br>AE-Schedules<br>(Actual/Estimate)<br>January 2010 - December<br>2010                 |
| Steven D. Scroggs<br>Winnie Powers | FPL                 | SDS-6          | Turkey Point 6 & 7 Site<br>Selection Costs<br>Nuclear Filing Requirements<br>(NFRs)<br>T-Schedules January 2010 -<br>December 2010 |
| Steven D. Scroggs                  | FPL                 | SDS-7          | Licenses, Permits and<br>Approvals   |
| Steven D. Scroggs                  | FPL                 | SDS-8          | Procedures and Work<br>Instructions  |
| Steven D. Scroggs                  | FPL                 | SDS-9          | Project Reports  |
| Steven D. Scroggs                  | FPL                 | SDS-10         | Project Instruction Forms  |
| Steven D. Scroggs                  | FPL                 | SDS-11         | Project Memoranda  |
| Steven D. Scroggs                  | FPL                 | SDS-12         | 2009 True-Up Costs Summary<br>Tables   |
| Steven D. Scroggs                  | FPL                 | SDS-13         | Comparison of 2008 Case C<br>and 2010 Cost Estimate<br>Revision  |
| Steven D. Scroggs                  | FPL                 | SDS-14         | 2010 True-Up Costs Summary<br>Tables   |
| Steven D. Scroggs                  | FPL                 | SDS-15         | New Nuclear Deployment<br>Schedule   |

| <u>Witness</u>                     | <u>Proffered By</u> | <u>Exhibit</u> | <u>Description</u>  |
|------------------------------------|---------------------|----------------|---|
| Steven D. Scroggs<br>Winnie Powers | FPL                 | SDS-16         | Turkey Point 6 & 7 Pre-Construction NFRs consists of 2011 P-schedules and 2011 TOR schedules  |
| Steven D. Scroggs<br>Winnie Powers | FPL                 | SDS-17         | Turkey Point 6 & 7 Site Selection NFRs consists of 2011 P Schedules and 2011 TOR Schedules.   |
| Steven D. Scroggs<br>Winnie Powers | FPL                 | SDS-18         | Turkey Point 6 & 7 Pre-Construction Costs Nuclear Filing Requirements (NFRs) 2011 AE-Schedules (Actual/Estimated) 2012 P-Schedules (Projections) TOR-Schedules (True-up to Original) January 2011 - December 2012 |
| Steven D. Scroggs                  | FPL                 | SDS-19         | Turkey Point 6 & 7 Site Selection Costs Nuclear Filing Requirements (NFRs) 2011 AE-Schedules (Actual/Estimated) 2012 P-Schedules (Projections) TOR-Schedules (True-up to Original) January 2011 - December 2012   |
| Steven D. Scroggs                  | FPL                 | SDS-20         | 2011-2012 Cost Summary Tables   |
| Nils J. Diaz                       | FPL                 | NJD-1          | Resume of Nils J. Diaz  |
| Nils J. Diaz                       | FPL                 | NJD-2          | New NRC Combined Licensing Process  |
| Nils J. Diaz                       | FPL                 | NJD-3          | New Reactor Licensing Applications  |
| Nils J. Diaz                       | FPL                 | NJD-4          | Nuclear Power Plant Technology Evolution  |
| Nils J. Diaz                       | FPL                 | NJD-5          | NRC Letter to FPL   |

| <u>Witness</u> | <u>Proffered By</u> | <u>Exhibit</u> | <u>Description</u>   |
|----------------|---------------------|----------------|--|
| Winnie Powers  | FPL                 | WP-1           | Revenue Requirements for 2009  |
| Winnie Powers  | FPL                 | WP-2           | 2009 Costs for Prudence Determination  |
| Winnie Powers  | FPL                 | WP-3           | 2009 Base Rate Revenue Requirements  |
| Winnie Powers  | FPL                 | WP-4           | 2009 Incremental Labor Guidelines  |
| Winnie Powers  | FPL                 | WP-5           | 2009 and 2010 Revenue Requirements   |
| Winnie Powers  | FPL                 | WP-6           | 2010 Uprate Construction Costs and 2009 and 2010 Turkey Point 6 & 7 Preconstruction Costs  |
| Winnie Powers  | FPL                 | WP-7           | 2010 Base Rate Revenue Requirements  |
| Winnie Powers  | FPL                 | WP-8           | 2009 and 2010 Incremental Labor Guidelines   |
| Winnie Powers  | FPL                 | WP-9           | 2010 Incremental Labor Guidelines Memo   |
| Winnie Powers  | FPL                 | WP-10          | 2011 and 2012 Revenue Requirements, details the Revenue Requirements being recovered in 2011 and to be recovered in 2012.  |
| Winnie Powers  | FPL                 | WP-11          | 2011 and 2012 Base Rate Revenue Requirements, details the revenue requirements for the Uprate plant modifications expected to be placed into service during 2011 (as updated for actual/estimated) and during 2012 (as projected). |

| <u>Witness</u>                  | <u>Proffered By</u> | <u>Exhibit</u> | <u>Description</u>   |
|---------------------------------|---------------------|----------------|--|
| John J. Reed                    | FPL                 | JJR-EPU 1      | Curriculum Vitae of John J. Reed   |
| John J. Reed                    | FPL                 | JJR-EPU 2      | Testimony of John J. Reed 1998 – 2011  |
| John J. Reed                    | FPL                 | JJR-EPU 3      | Total Production Cost of Electricity   |
| John J. Reed                    | FPL                 | JJR-EPU 4      | List of the EPU Projects' Periodic Meetings  |
| John J. Reed                    | FPL                 | JJR-EPU 5      | Concentric Observations Regarding the EPU Projects' Activities in 2009               |
| John J. Reed                    | FPL                 | JJR-EPU 6      | Concentric's Prior Recommendations for the EPU Projects                              |
| John J. Reed                    | FPL                 | JJR-NNP-1      | Curriculum Vitae of John J. Reed   |
| John J. Reed                    | FPL                 | JJR-NNP-2      | Testimony of John J. Reed 1998 – 2011  |
| John J. Reed                    | FPL                 | JJR-NNP-3      | Total Production Cost of Electricity   |
| John J. Reed                    | FPL                 | JJR-NNP-4      | PTN 6 & 7 Project Organizational Chart   |
| John J. Reed                    | FPL                 | JJR-NNP-5      | Concentric Observations Regarding PTN 6 & 7's Activities                             |
| Terry O. Jones<br>Winnie Powers | FPL                 | TOJ-1          | EPU T-Schedules, 2009 EPU Construction Costs, containing schedules T-1 through T-7A  |
| Terry O. Jones                  | FPL                 | TOJ-2          | 2009 Extended Power Uprate Project Instructions (EPPI) Index as of December 31, 2009 |
| Terry O. Jones                  | FPL                 | TOJ-3          | 2009 Extended Power Uprate Project Organization Chart                                |

| <u>Witness</u>                  | <u>Proffered By</u> | <u>Exhibit</u> | <u>Description</u>   |
|---------------------------------|---------------------|----------------|--|
| Terry O. Jones                  | FPL                 | TOJ-4          | 2009 Extended Power Uprate Project Reports   |
| Terry O. Jones                  | FPL                 | TOJ-5          | St. Lucie Low Pressure (LP) Turbine Rotors   |
| Terry O. Jones                  | FPL                 | TOJ-6          | St. Lucie Low Pressure (LP) Turbine Rotor Rings                                      |
| Terry O. Jones                  | FPL                 | TOJ-7          | St. Lucie Low Pressure (LP) Turbine Rotor Ring Testing                               |
| Terry O. Jones                  | FPL                 | TOJ-8          | Plant Change Modification (PCM) Status as of December 31, 2009                       |
| Terry O. Jones                  | FPL                 | TOJ-9          | Extended Power Uprate Equipment List as of December 31, 2009                         |
| Terry O. Jones                  | FPL                 | TOJ-10         | Extended Power Uprate Project Schedule as of December 31, 2009                       |
| Terry O. Jones                  | FPL                 | TOJ-11         | Summary of 2009 Extended Power Uprate Construction Costs                             |
| Terry O. Jones<br>Winnie Powers | FPL                 | TOJ-12         | AE Schedules, 2010 EPU Construction Costs, containing schedules AE-1 through AE-7B.  |
| Terry O. Jones<br>Winnie Powers | FPL                 | TOJ-13         | T-Schedules, 2010 EPU Construction Costs, containing schedules T-1 through T-7B.     |
| Terry O. Jones                  | FPL                 | TOJ-14         | 2010 Extended Power Uprate Project Instructions (EPPI) Index as of December 31, 2010 |
| Terry O. Jones                  | FPL                 | TOJ-15         | 2010 Extended Power Uprate Project Site Centered Organization Chart                  |

| <u>Witness</u>                  | <u>Proffered By</u> | <u>Exhibit</u> | <u>Description</u>   |
|---------------------------------|---------------------|----------------|--|
| Terry O. Jones                  | FPL                 | TOJ-16         | 2010 Extended Power Uprate Project Reports                     |
| Terry O. Jones                  | FPL                 | TOJ-17         | Plant Change Modification (PCM) Status as of December 31, 2010 |
| Terry O. Jones                  | FPL                 | TOJ-18         | Extended Power Uprate Equipment List as of December 31, 2010   |
| Terry O. Jones                  | FPL                 | TOJ-19         | Extended Power Uprate Project Schedule as of December 31, 2010 |
| Terry O. Jones                  | FPL                 | TOJ-20         | Summary of 2010 Extended Power Uprate Construction Costs       |
| Terry O. Jones<br>Winnie Powers | FPL                 | TOJ-21         | 2011 P Schedules and 2011 TOR Schedules                        |
| Terry O. Jones<br>Winnie Powers | FPL                 | TOJ-22         | 2011 AE Schedules, 2012 P Schedules, and 2012 TOR Schedules.   |
| Terry O. Jones                  | FPL                 | TOJ-23         | Extended Power Uprate Project Schedule as of April 2011        |
| Terry O. Jones                  | FPL                 | TOJ-24         | 2011 Extended Power Uprate Work Activities                     |
| Terry O. Jones                  | FPL                 | TOJ-25         | EPU Actual/Estimated 2011 Summary Cost Tables                  |
| Terry O. Jones                  | FPL                 | TOJ-26         | 2012 Extended Power Uprate Work Activities                     |
| Terry O. Jones                  | FPL                 | TOJ-27         | EPU Projected 2012 Summary Cost Tables                         |
| William B. Derrickson           | FPL                 | WBD-1          | Resume of William B. Derrickson                                |
| William B. Derrickson           | FPL                 | WBD-2          | "A Nuclear Plant Built on Schedule"                            |



| <u>Witness</u>        | <u>Proffered By</u> | <u>Exhibit</u> | <u>Description</u>   |
|-----------------------|---------------------|----------------|--|
| William B. Derrickson | FPL                 | WBD-3          | “Achieving Project Goals in Contrasting Environments-The Value of a Strong Management Philosophy”  |
| William B. Derrickson | FPL                 | WBD-4          | “Nuclear Construction-Doing it Right”  |
| William B. Derrickson | FPL                 | WBD-5          | Chronology of Nuclear Power Event and Regulations  |
| William B. Derrickson | FPL                 | WBD-6          | Cumulative Regulatory Changes (1968-1985)  |
| William B. Derrickson | FPL                 | WBD-7          | The list of persons with whom I discussed the EPU Project  |
| William B. Derrickson | FPL                 | WBD-8          | The list of documents reviewed   |
| William B. Derrickson | FPL                 | WBD-9          | Photographs of the Turkey Point Plant  |
| William B. Derrickson | FPL                 | WBD-10         | Photographs of the St. Lucie Plant   |
| William B. Derrickson | FPL                 | WBD-11         | PTN3R25 and 4R26 EPU Outage Details  |
| William B. Derrickson | FPL                 | WBD-12         | PSL EPU Outage Details   |
| Steven R. Sim         | FPL                 | SRS-1          | Summary of Results from FPL’s 2011 Feasibility Analyses of the EPU and Turkey Point 6 & 7 Projects   |
| Steven R. Sim         | FPL                 | SRS-2          | Comparison of Key Assumptions Utilized in the 2010 and 2011 Feasibility Analyses of FPL Nuclear Projects: Projected Fuel Costs (Medium Fuel Cost Forecast) |

| <u>Witness</u> | <u>Proffered By</u> | <u>Exhibit</u> | <u>Description</u>   |
|----------------|---------------------|----------------|--|
| Steven R. Sim  | FPL                 | SRS-3          | Comparison of Key Assumptions Utilized in the 2010 and 2011 Feasibility Analyses of FPL Nuclear Projects: Projected Environmental Compliance Costs (Env II Forecast) |
| Steven R. Sim  | FPL                 | SRS-4          | Comparison of Key Assumptions Utilized in the 2010 and 2011 Feasibility Analyses of FPL Nuclear Projects: Summer Peak Demand Load Forecast                           |
| Steven R. Sim  | FPL                 | SRS-5          | Projection of FPL's Resource Needs Through 2025  |
| Steven R. Sim  | FPL                 | SRS-6          | Comparison of Key Assumptions Utilized in the 2010 and 2011 Feasibility Analyses of FPL Nuclear Projects: Other Assumptions  |
| Steven R. Sim  | FPL                 | SRS-7          | The Two Resource Plans Utilized in the 2011 Feasibility Analyses of the EPU Project  |
| Steven R. Sim  | FPL                 | SRS-8          | 2011 Feasibility Analyses Results for the EPU Project: Total Costs and Total Cost Differentials for All Fuel and Environmental Compliance Cost Scenarios in 2011\$   |
| Steven R. Sim  | FPL                 | SRS-9          | 2011 Feasibility Analyses Results for the EPU Project: Percentage of FPL's Fuel Mix from Nuclear, 2010 - 2020  |
| Steven R. Sim  | FPL                 | SRS-10         | The Two Resource Plans Utilized in the 2011 Feasibility Analyses of Turkey Point 6 & 7   |

| <u>Witness</u> | <u>Proffered By</u> | <u>Exhibit</u>     | <u>Description</u>  |
|----------------|---------------------|--------------------|---|
| Steven R. Sim  | FPL                 | SRS-11             | 2011 Feasibility Analyses Results for Turkey Point 6 & 7: Total Costs, Total Cost Differentials, and Breakeven Costs for All Fuel and Environmental Compliance Cost Scenarios in 2011\$ |
| Steven R. Sim  | FPL                 | SRS-12             | Direct Testimony and Exhibits of Steven R. Sim in the 2010 NCRC docket  |
| Steven R. Sim  | FPL                 | Supplemental SRS-1 | Summary of Results from FPL's 2011 Feasibility Analyses of the EPU and Turkey Point 6 & 7 Projects  |
| Steven R. Sim  | FPL                 | Supplemental SRS-3 | Comparison of Key Assumptions Utilized in 2010 and 2011 Feasibility Analyses of FPL Nuclear Projects: Projected Environmental Compliance Costs (Env II Forecast)                        |
| Steven R. Sim  | FPL                 | Supplemental SRS-5 | Projection of FPL's Resource Needs through 2025   |
| Steven R. Sim  | FPL                 | Supplemental SRS-7 | The Two Resource Plans Utilized in the 2011 Feasibility Analyses of the EPU Project   |
| Steven R. Sim  | FPL                 | Supplemental SRS-8 | The Two Resource Plans Utilized in the 2011 Feasibility Analyses of the EPU Project   |
| Steven R. Sim  | FPL                 | Supplemental SRS-9 | 2011 Feasibility Analyses Results for the EPU Project: Percentage of FPL's Fuel Mix from Nuclear, 2010 - 2020   |

| <u>Witness</u>         | <u>Proffered By</u> | <u>Exhibit</u>         | <u>Description</u>  |
|------------------------|---------------------|------------------------|---|
| Steven R. Sim          | FPL                 | Supplemental<br>SRS-10 | The Two Resource Plans Utilized in the 2011 Feasibility analyses of Turkey Point 6&7  |
| Steven R. Sim          | FPL                 | Supplemental<br>SRS-11 | 2011 Feasibility Analyses Results for Turkey Point 6 & 7: Total Costs, Total Cost Differentials, and Breakeven Costs for All Fuel and Environmental Compliance Cost Scenarios in 2011\$ |
| Brian D. Smith         | OPC                 | BDS(FPL)-1             | Resume of Brian D. Smith  |
| Brian D. Smith         | OPC                 | BDS(FPL)-2             | EPU Revenue Requirement Impact  |
| William R. Jacobs, Jr. | OPC                 | WRJ(FPL)-1             | Resume of William R. Jacobs, Jr.  |
| William R. Jacobs, Jr. | OPC                 | WRJ(FPL)-2             | Resume of James P. McGaughy, Jr.  |
| William R. Jacobs, Jr. | OPC                 | WRJ(FPL)-3             | FPL Response to OPC Interrogatory No. 85  |
| William R. Jacobs, Jr. | OPC                 | WRJ(FPL)-4             | FPL October 2010 Graph, with Jacobs' Addition   |
| William R. Jacobs, Jr. | OPC                 | WRJ(FPL)-5             | March 2011 ESC Slide Indicating Engineering Difficulties  |
| William R. Jacobs, Jr. | OPC                 | WRJ(FPL)-6             | March 2011 ESC Slide Re: Change in Outage Start Date<br>CONFIDENTIAL  |
| William R. Jacobs, Jr. | OPC                 | WRJ(FPL)-7             | May 2009 ESC Meeting Presentation<br>CONFIDENTIAL   |
| William R. Jacobs, Jr. | OPC                 | WRJ(FPL)-8             | July 26, 2009 ESC Meeting (Turkey Point Presentation)<br>CONFIDENTIAL   |

| <u>Witness</u>            | <u>Proffered By</u> | <u>Exhibit</u> | <u>Description</u>   |
|---------------------------|---------------------|----------------|--|
| William R. Jacobs, Jr.    | OPC                 | WRJ(FPL)-9     | July 26, 2009 ESDD Meeting (St. Lucie Presentation)<br>CONFIDENTIAL  |
| William R. Jacobs, Jr.    | OPC                 | WRJ(FPL)-10    | Email from Kundalkar to Nazar, May 30, 2009  |
| William R. Jacobs, Jr.    | OPC                 | WRJ(FPL)-11    | Excerpts from Kundalkar Deposition   |
| William R. Jacobs, Jr.    | OPC                 | WRJ(FPL)-12    | FPL Response to OPC Interrogatory No. 19   |
| William R. Jacobs, Jr.    | OPC                 | WRJ(FPL)-13    | FPL Response to OPC Interrogatory No. 82   |
| Lynn Fisher<br>David Rich | Staff               | FR-1           | 2010 Review of Florida Power & Light's Project Management Internal Controls for Nuclear Plant Uprate and Construction Projects |
| Lynn Fisher<br>David Rich | Staff               | FR-2           | 2009 Review of Florida Power & Light's Project Management Internal Controls for Nuclear Plant Uprate and Construction Projects |
| Kathy L. Welch            | Staff               | KLW-1          | History of Testimony Provided by Kathy L. Welch  |
| Kathy L. Welch            | Staff               | KLW-2          | Audit Report for 2010 costs for the Turkey Point 6 & 7 nuclear power plants  |
| Kathy L. Welch            | Staff               | KLW-3          | History of Testimony Provided by Kathy L. Welch  |
| Kathy L. Welch            | Staff               | KLW-4          | Audit Report on the 2010 power uprate costs for the for the Turkey Point and St. Lucie nuclear power plants                    |

Rebuttal

|              |     |      |   |
|--------------|-----|------|---|
| Terry Deason | FPL | TD-1 | Biographical Information for Terry Deason |
|--------------|-----|------|---|

| <u>Witness</u> | <u>Proffered By</u> | <u>Exhibit</u> | <u>Description</u>   |
|----------------|---------------------|----------------|--|
| Terry O. Jones | FPL                 | TOJ-28         | FPL's Response to OPC's Sixth Set of Interrogatories No. 47                        |
| Terry O. Jones | FPL                 | TOJ-29         | SL 1-24 Design Engineering Production  |
| Steven R. Sim  | FPL                 | SRS-13         | Transcript of Dr. Jacobs' Panel Testimony in a recent Georgia Power nuclear docket |
| Steven R. Sim  | FPL                 | SRS-14         | Comparison of 2009 Feasibility Analysis Results and Sensitivity Analysis Results   |

**PROGRESS ENERGY FLORIDA, INC.**

| <u>Witness</u> | <u>Proffered By</u> | <u>Exhibit</u> | <u>Description</u>  |
|----------------|---------------------|----------------|---|
| <u>Direct</u>  |                     |                |   |
| Will Garrett   | PEF                 | WG-1           | CONFIDENTIAL - Schedules T-1 through T-7B and Appendices A through C, reflecting PEF's retail revenue requirements for the CR3 Uprate project for period January 2009 through December 2009 (Jon Franke sponsoring portions of schedules T-4 & T-6, as well as Appendix B, and sponsoring schedules T-4A, T-6A, T-6B, T-7, T-7A & T-7B) |
| Will Garrett   | PEF                 | WG-2           | CONFIDENTIAL - Schedules T-1 through T-7B and Appendices A through D, which reflect PEF's retail revenue requirements for the LNP from January 2010 through December 2010 (Sue Hardison sponsoring portions of T4, T-4A, T-6, as well as Appendix D, and sponsoring schedules T-6A, T-6B, T-7, T-7A & T-7B)                             |

| <u>Witness</u> | <u>Proffered By</u> | <u>Exhibit</u>    | <u>Description</u>  |
|----------------|---------------------|-------------------|---|
| Will Garrett   | PEF                 | WG-3              | CONFIDENTIAL - Schedules T-1 through T-7B and Appendices A through D, reflecting PEF's retail revenue requirements for the CR3 Uprate for period January 2010 through December 2010 (Jon Franke sponsoring portions of schedules T-4, T-4A & T-6.3, as well as Appendix D, and sponsoring schedules T-6A.3, T-6B.3, T-7, T-7A & T-7B) |
| Jon Franke     | PEF                 | JF-1              | CONFIDENTIAL - Work Authorization No. 84 between PEF and AREVA  |
| Jon Franke     | PEF                 | JF-2              | Review standard for Extended Power Uprate (RS-001)  |
| Jon Franke     | PEF                 | JF-3              | CONFIDENTIAL - Excerpts from 2010 Commission Staff's Audit Report applicable to the CR3 Uprate Project  |
| Jon Franke     | PEF                 | JF-4              | CONFIDENTIAL - EPU Expert Panel November 6, 2009 Management Debrief   |
| Jon Franke     | PEF                 | JF-5              | CONFIDENTIAL - Breakdown of 2009 Project Management and License Application Costs   |
| Jon Franke     | PEF                 | JF-6              | CONFIDENTIAL - Change Order 23 to Work Authorization No. 84   |
| Jon Franke     | PEF                 | JF-7              | Index of 2010 Revised and New Project Management Policies and Procedures  |
| Jon Franke     | PEF                 | JF-8 <sup>2</sup> | Detailed description of the engineering scope changes for the EPU phase work required to successfully implement the CR3 power uprate  |

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<sup>2</sup> The May 2, 2011 Exhibits of Jon Franke JF-1 through JF-4 have been renumbered to JF-8 through JF-11 to be consecutively numbered consistent with Mr. Franke's March 1, 2011 exhibits.

| <u>Witness</u>   | <u>Proffered By</u> | <u>Exhibit</u> | <u>Description</u>   |
|------------------|---------------------|----------------|--|
| Jon Franke       | PEF                 | JF-9           | A schedule of the phase 2 and phase 3 work scope for the Uprate project through the Integrated Project plan (“IPP”) revisions and proposed revisions for the Uprate project  |
| Jon Franke       | PEF                 | JF-10          | CONFIDENTIAL – Integrated Change Form (“ICF”) for EPU Actuation design specification and implementation modification for Engineering Change (“EC”) 76340   |
| Jon Franke       | PEF                 | JF-11          | Summary of the Company’s updated Cumulative present value revenue requirements (“CPVRR”) analysis for the CR3 Uprate Project   |
| Thomas G. Foster | PEF                 | TGF-1          | CONFIDENTIAL - Schedules AE-1 through AE-7B and Appendices A through F which reflect PEF’s retail revenue requirements for the LNP from January 2011 through December 2011 (Sue Hardison is sponsoring portions of schedules AE-4, AE-4A, AE-6 and sponsoring schedules AE-6A through AE-7B) |
| Thomas G. Foster | PEF                 | TGF-2          | CONFIDENTIAL - Schedules P-1 through P-8 and Appendices A through F, which reflect PEF’s projected retail revenue requirements for the LNP for January 2012 through December 2012 (Sue Hardison is sponsoring portions of P-4, P-6 and sponsoring P-6A through P-7B)                         |
| Thomas G. Foster | PEF                 | TGF-3          | CONFIDENTIAL - Schedule TOR-1 through TOR-7, which reflect the total estimated costs for the LNP project up to the in-service date (Sue Hardison is sponsoring portions of TOR-4, TOR-6 (with John Elnitsky) & sponsoring TOR-6A, and John Elnitsky sponsoring schedule TOR-7)               |



| <u>Witness</u>   | <u>Proffered By</u> | <u>Exhibit</u>    | <u>Description</u>   |
|------------------|---------------------|-------------------|--|
| Thomas G. Foster | PEF                 | TGF-4             | CONFIDENTIAL - Schedules AE-1 through AE-7B and Appendixes A through E, which reflect PEF's retail revenue requirements for the CR3 Uprate Filing from January 2011 through December 2011 (Jon Franke sponsoring portions of Schedules AE-4, AE-4A, AE-6.3 and Appendix B, and sponsoring schedules AE-6A.3 through AE-7B) |
| Thomas G. Foster | PEF                 | TGF-5             | CONFIDENTIAL - Schedules P-1 through P-8 and Appendixes A through D, which reflect PEF's projected retail revenue requirements for the Crystal River Unit 3 (CR3) Uprate filing for January 2012 through December 2012 (Jon Franke sponsoring portions of P-4, P-6.3, and sponsoring P-6.3A through P-7B)                  |
| Thomas G. Foster | PEF                 | TGF-6             | Schedules TOR-1 through TOR-7, which reflect the total estimated costs for the CR3 Uprate project up to the in-service date (Jon Franke sponsoring portions of TOR-4 and TOR-6 and sponsoring schedules TOR-6A and TOR-7)  |
| John Elnitsky    | PEF                 | JE-1              | CONFIDENTIAL – List of Long Lead Equipment (LLE) for the LNP   |
| John Elnitsky    | PEF                 | JE-2              | CONFIDENTIAL – May 2010 LLE Timeline   |
| John Elnitsky    | PEF                 | JE-3              | CONFIDENTIAL – LLE Disposition Timeline  |
| John Elnitsky    | PEF                 | JE-4 <sup>3</sup> | NRC revised review schedule for the LNP Combined Operating License Application (“COLA”)  |

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<sup>3</sup> The May 2, 2011 Exhibits of John Elnitsky JE-1 through JE-8 have been renumbered to JE-4 through JE-11 to be consistently consecutively numbered with Mr. Elnitsky's March 1, 2011 exhibits.

| <u>Witness</u>         | <u>Proffered By</u> | <u>Exhibit</u> | <u>Description</u>  |
|------------------------|---------------------|----------------|---|
| John Elnitsky          | PEF                 | JE-5           | A graphic illustration of the steps and timing of the PEF LNP COLA review process   |
| John Elnitsky          | PEF                 | JE-6           | CONFIDENTIAL – A chart of the current long lead equipment (“LLE”) purchase order disposition status   |
| John Elnitsky          | PEF                 | JE-7           | PEF’s updated cumulative life-cycle net present value revenue requirements (“CPVRR”) calculation for the LNP compared to the costs-effectiveness analysis presented in the Need Determination proceeding for Levy Units 1 and 2 |
| John Elnitsky          | PEF                 | JE-8           | A composite exhibit of PEF’s rating agency reports  |
| John Elnitsky          | PEF                 | JE-9           | Illustrative example of estimated typical customer bill impact of the near-term LNP costs in 2010-2012  |
| John Elnitsky          | PEF                 | JE-10          | Compound annual growth rates for PEF retail customers   |
| John Elnitsky          | PEF                 | JE-11          | CONFIDENTIAL – Estimate updates of LNP costs post-COL receipt   |
| William R. Jacobs, Jr. | OPC                 | WRJ (PEF)-1    | Resume of William R. Jacobs, Jr.  |
| William R. Jacobs, Jr. | OPC                 | WRJ (PEF)-2    | Resume of James P. McGaughy, Jr.  |
| William R. Jacobs, Jr. | OPC                 | WRJ (PEF)-3    | Schedule and Cash Flow Analyses for the Project - CONFIDENTIAL  |
| William R. Jacobs, Jr. | OPC                 | WRJ (PEF)-4    | News Article  |
| William R. Jacobs, Jr. | OPC                 | WRJ (PEF)-5    | August 23, SMC Strategic Planning retreat Scenario Analysis for Progress Energy Florida   |

| <u>Witness</u>                    | <u>Proffered By</u> | <u>Exhibit</u> | <u>Description</u>  |
|-----------------------------------|---------------------|----------------|---|
| William Coston<br>Kevin Carpenter | Staff               | CC-1           | Review of Progress Energy Florida's Project Management Internal Controls for Nuclear Plant Uprate and Construction Projects           |
| Jeffery A. Small                  | Staff               | JAS-1          | Audit Report to address the pre-construction and construction costs as of December 31, 2010 for Levy County Units 1 & 2               |
| Jeffery A. Small                  | Staff               | JAS-2          | Audit Report for 2010 power uprate costs for the Crystal River Unit 3 nuclear power plant   |
| <u>Rebuttal</u>                   |                     |                |   |
| Thomas G. Foster                  | PEF                 | TGF-7          | Selected Pages of Commission Order No. PSC-09-0783-FOF-EI related to the LNP rate management plan                                     |
| Thomas G. Foster                  | PEF                 | TGF-8          | Selected Pages of Commission Order No. PSC-11-0095-FOF-EI related to the LNP rate management plan                                     |
| Thomas G. Foster                  | PEF                 | TGF-9          | Schedule showing rate impacts of PEF's proposed rate management plan compared to what they would be under the plan presented in 2010. |
| Jon Franke                        | PEF                 | JF-12          | Excerpts of Jacobs' deposition testimony in Docket No. 110009-EI  |
| Jon Franke                        | PEF                 | JF-13          | Excerpts of Jacobs' deposition and hearing testimony in Docket No. 100009-EI  |
| Jon Franke                        | PEF                 | JF-14          | The CR3 EPU Expert Panel Management Debrief dated July 14, 2009   |
| John Elnitsky                     | PEF                 | JE-12          | CONFIDENTIAL – LNP March 2011 Integrated Project Plan (“IPP”)   |
| John Elnitsky                     | PEF                 | JE-13          | CONFIDENTIAL – LNP April 2010 IPP   |
| John Elnitsky                     | PEF                 | JE-14          | PEF July 27, 2010 scenario analysis   |

| <u>Witness</u> | <u>Proffered By</u> | <u>Exhibit</u> | <u>Description</u>   |
|----------------|---------------------|----------------|--|
| John Elnitsky  | PEF                 | JE-15          | Selected, relevant discovery requests in the 2010 and 2011 nuclear cost recovery clause ("NCRC") proceedings |
| John Elnitsky  | PEF                 | JE-16          | Excerpts of Jacobs' deposition testimony in Docket No. 090009-EI.  |

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

X. PROPOSED STIPULATIONS

There are no proposed stipulations at this time.

XI. PENDING MOTIONS

**FPL:**

| <b>Motion Document No.</b> | <b>Date Filed</b> | <b>Description</b>  |
|----------------------------|-------------------|---|
| 05057-11                   | 07/21/11          | Motion to Strike OPC's Testimony and Proposed Issues  |
| 04738-11                   | 07/11/11          | Motion for temporary protective order for audit report  |
| 04637-11                   | 07/06/11          | Motion for temporary protective order for Mr. Kundalkar's deposition transcript.  |
| 04428-11                   | 06/27/11          | Motion for temporary protective order for deposition transcripts of Steven Sim, John Reed, and Terry Jones.   |
| 04102-11                   | 06/15/11          | Motion for temporary protective order for witness Art Stall deposition transcript.  |
| 04066-11                   | 06/13/11          | Motion for temporary protective order of information included in responses to OPC's 10th request for PODs and 7th set of interrogatories.   |
| 03684-11                   | 05/25/11          | Motion for temporary protective order for FPL's responses to OPC's 9th request for PODs (Nos. 68, 70-71, and 74).   |
| 03128-11                   | 05/05/11          | Motion for temporary protective order, to exempt from Section 119.07(1), FS, confidential information included in Exhs TOJ-21 and TOJ-22 to prefiled testimony of Terry O. Jones and Exhs SDS-16 and SDS-18 to prefiled testimony of Steven D. Scroggs. |
| 03093-11                   | 05/04/11          | Motion for temporary protective order for FPL's responses to OPC's discovery requests.  |
| 01571-11                   | 03/10/11          | Motion for temporary protective order of confidential information included in responses to OPC's 2nd set of interrogatories (No. 7) and 3rd request for PODs (No. 40).  |

|          |          |  |
|----------|----------|--|
| 01455-11 | 03/03/11 | Motion for temporary protective order of information included in Exhs TOJ-1, TOJ-12, and TOJ-13 to prefiled testimony of Terry O. Jones and Exhs SDS-1, SDS-2, and SDS-3 to prefiled testimony of Steven D. Scroggs. |
| 00967-11 | 02/10/11 | Motion for temporary protective order of information contained in FPL's supplemental responses to OPC's 1st request for PODs (No. 21) and 2nd request for PODs (No. 32).   |
| 00384-11 | 01/14/11 | Motion for temporary protective order of information contained in FPL's responses to OPC's 2nd request for PODs (Nos. 32-33 and 37-38).  |

**PEF:** Progress Energy Florida, Inc.'s Motion for Deferral of the Approval of the Long-Term Feasibility and the Reasonableness of Projected Construction Expenditures and Associated Carrying Costs for the Crystal River Unit 3 Uprate Project and Petition for a Temporary Variance or Waiver of Rule 25-6.0423(5)(c)2, 5, F.A.C. on an Emergency Basis.

**OPC:** None.

**SACE:** None.

**FIPUG:** None.

**PCS PHOSPHATE:** None.

**FEA:** None.

**STAFF:** None.

**XII. PENDING CONFIDENTIALITY MATTERS**

**FPL:**

| <b>Request Document No.</b> | <b>Date Filed</b> | <b>Description</b>  |
|-----------------------------|-------------------|---|
| 05327-11                    | 07/29/11          | Request for confidential classification of testimony and exhibits of William Jacobs                             |
| 05095-11                    | 07/22/11          | Request for confidential classification of Mr. Jones's deposition transcript                                    |
| 04566-11                    | 07/01/11          | Request for confidential classification of internal controls audit workpapers.                                  |
| 04397-11                    | 06/24/11          | Request for confidential classification of staff's audit report on project management internal controls report. |
| 04306-11                    | 06/22/11          | Request for confidential classification of materials  |

|          |          |  |
|----------|----------|--|
|          |          | provided pursuant to Audit No. 11-024-4-2.   |
| 04144-11 | 06/16/11 | Request for extension of confidential classification of Exh. SDS-5 in Docket No. 090009-EI.  |
| 04050-11 | 06/10/11 | Request for confidential classification of materials provided pursuant to Audit No. 11-024-4-1.  |
| 03695-11 | 05/26/11 | Request for confidential classification of audit workpapers (43-3/2) from Audit #08-248-4-2  |
| 03012-11 | 05/02/11 | Request for confidential classification of the May 2011 filing.  |
| 1383-11  | 03/01/11 | Request for confidential classification of the March 2011 True-Up filing.  |
| 0980-11  | 02/10/11 | First request for extension of confidential classification of the May 2009 exhibits and testimony.   |
| 0086-11  | 01/05/11 | First request for extension of confidential classification of the March 2009 exhibits and testimony  |
| 0085-11  | 01/05/11 | First request for extension of confidential classification of response to Staff's 1 <sup>st</sup> request for POD 1 in Docket No. 090009-EI.           |
| 0084-11  | 01/05/11 | First request for extension of confidential classification of responses to Staff's 2 <sup>nd</sup> request for PODs No. 2 & 3 in Docket No. 090009-EI. |

**PEF:**

| <b>Request Document No.</b> | <b>Date Filed</b> | <b>Description</b>   |
|-----------------------------|-------------------|--|
| 01371-11                    | 03/01/11          | First Request for Confidential Classification re Portions of Testimony and Exhibits and Petition Filed as Part of the Company's March 1, 2011 True-Up Filing   |
| 02891-11                    | 04/27/11          | Second Request for Confidential Classification re the Company's Responses to OPC's 1st Request for Production ("POD) Nos. 1,2, 3, 4 and 6 and 1 <sup>st</sup> Set of Interrogatories ("ROG") Nos. 1 and 2  |
| 03022-11                    | 05/02/11          | Third Request for Confidential Classification re Portions of the Testimonies, Exhibits and NFRs Filed as Part of the Company's May 2, 2011 Petition for Approval of Costs to be Recovered, testimony, exhibits and NFRs of Foster, testimony of Hardison, testimony and exhibits of Elnitsky, and exhibits of Franke |
| 03144-11                    | 05/05/11          | Fourth Request for Confidential Classification re PEF's responses to Citizen's 2 <sup>nd</sup> POD Nos. 9, 10 and 11 and   |

|          |          |  |
|----------|----------|--|
|          |          | 2nd ROG No. 5  |
| 03195-11 | 05/09/11 | Fifth Request for Confidential Classification re Audit Control No. 11-024-2-2 Workpapers   |
| 03987-11 | 06/09/11 | Seventh Request for Confidential Classification re responses to Citizen's 3 <sup>rd</sup> POD Nos. 12-16 and 18 and 3 <sup>rd</sup> ROG Nos. 18, 20, 27 and 28                         |
| 04351-11 | 06/23/11 | Eighth Request for Confidential Classification re PEF responses to Staff's 3 <sup>rd</sup> ROG Nos. 14 and 16  |
| 04345-11 | 06/23/11 | Ninth Request for Confidential Classification re PEF responses to Citizen's 4 <sup>th</sup> POD Nos. 21 and 23, and 4 <sup>th</sup> ROG Nos. 36 and 55                                 |
| 04535-11 | 07/01/11 | Tenth Request for Confidential Classification re Review of PEF's Project Management Internal Controls for Nuclear Plant Uprate and Construction Projects Audit Report No. PA-11-01-001 |
| 04539-11 | 07/01/11 | Eleventh Request for Confidential Classification re PEF's Project Management Internal Controls for Nuclear Plant Uprate and Construction Projects Audit Work Papers                    |
| 04595-11 | 07/05/11 | Twelfth Request for Confidential Classification re PEF's responses to Citizen's 5 <sup>th</sup> POD Nos. 27, 28 and 29, and 5 <sup>th</sup> ROG Nos. 66, 90, 127 and documents to 142  |
| 04894-11 | 07/15/11 | Thirteenth Request for Confidential Classification re late filed exhibit LFE No. 1 of Elnitsky and late filed exhibits of Franke Nos. 6 and 7  |
| 05101-11 | 07/22/11 | Fourteenth Request for Confidential Classification re portions of John Elnitsky's June 17, 2011 deposition   |
| 05106-11 | 07/22/11 | Fifteenth Request for Confidential Classification re exhibit WJR(PEF)-3 of William R. Jacob, Jr., Ph.D's Direct Testimony  |
| 05123-11 | 07/25/11 | Sixteenth Request for Confidential Classification re Prehearing Statement and rebuttal testimony exhibits (pending)  |

**OPC:** None.

**SACE:** None.

**FIPUG:** None.

**PCS PHOSPHATE:** None.

**FEA:** None.

**STAFF:** None.

### XIII. POST-HEARING PROCEDURES

If no bench decision is made, each party shall file a post-hearing statement of issues and positions. A summary of each position of no more than 120 words, set off with asterisks, shall be included in that statement. If a party's position has not changed since the issuance of this Prehearing Order, the post-hearing statement may simply restate the prehearing position; however, if the prehearing position is longer than 120 words, it must be reduced to no more than 120 words. If a party fails to file a post-hearing statement, that party shall have waived all issues and may be dismissed from the proceeding.

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

### XIV. RULINGS

All opening statements, testimony, and exhibits pertaining to FPL's petition shall be taken up first, followed immediately by all opening statements, testimony and exhibits pertaining to PEF's petition.

Opening statements, if any, shall not exceed ten minutes per party for FPL's petition and shall not exceed ten minutes per party for PEF's petition.

FIPUG's Agreed Motion for PEF to Begin Hearing on Date Certain of August 22, 2011 is denied.

PEF's unopposed Motion to Defer Approval of the Long-term Feasibility and Reasonableness of the Projected Construction Expenditures and Associated Carrying Costs for the CR3 Uprate Project is referred to the full Commission for a ruling.

FPL's Motion to Strike OPC's Testimony Collaterally Challenging the Commission's Need Determination, Requesting Implementation of a Risk Sharing Mechanism, and Proposed



Issues 10A, 10B, 16, 17, 18<sup>4</sup> is granted, in part, to the extent it seeks to exclude Issue 10A. The remainder of the motion is referred to the full Commission for a ruling.

FPL's Motion to Preclude SACE Testimony is hereby granted.

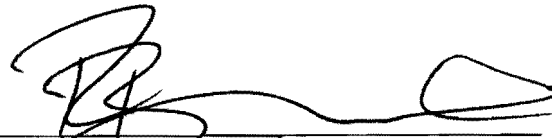
Post-hearing positions shall be limited to 120 words per issue and post-hearing briefs shall be limited to 50 pages per case.

Each witness shall be given 5 minutes to summarize his or her testimony.

It is therefore,

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

By ORDER of Commissioner Ronald A. Brisé, as Prehearing Officer, this 9th day of August, 2011.



RONALD A. BRISE  
Commissioner and Prehearing Officer  
Florida Public Service Commission  
2540 Shumard Oak Boulevard  
Tallahassee, Florida 32399  
(850) 413-6770  
www.floridapsc.com

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<sup>4</sup> These issues were previously numbered Issues 3, 4, 5A and 5B, and are identified as such in FPL's Motion.

NOTICE OF FURTHER PROCEEDINGS OR JUDICIAL REVIEW

The Florida Public Service Commission is required by Section 120.569(1), Florida Statutes, to notify parties of any administrative hearing or judicial review of Commission orders that is available under Sections 120.57 or 120.68, Florida Statutes, as well as the procedures and time limits that apply. This notice should not be construed to mean all requests for an administrative hearing or judicial review will be granted or result in the relief sought.

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

Any party adversely affected by this order, which is preliminary, procedural or intermediate in nature, may request: (1) reconsideration within 10 days pursuant to Rule 25-22.0376, Florida Administrative Code; or (2) judicial review by the Florida Supreme Court, in the case of an electric, gas or telephone utility, or the First District Court of Appeal, in the case of a water or wastewater utility. A motion for reconsideration shall be filed with the Office of Commission Clerk, in the form prescribed by Rule 25-22.0376, Florida Administrative Code. Judicial review of a preliminary, procedural or intermediate ruling or order is available if review of the final action will not provide an adequate remedy. Such review may be requested from the appropriate court, as described above, pursuant to Rule 9.100, Florida Rules of Appellate Procedure.