

MIKE  
HARIDOPoulos  
President of the Senate



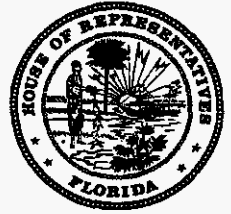
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DEAN CANNON  
Speaker of the  
House of Representatives



August 6, 2012

Ms. Ann Cole, Commission Clerk  
Office of Commission Clerk  
Florida Public Service Commission  
2540 Shumard Oak Blvd.  
Tallahassee, FL 32399-0850

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Re: Docket No. 120009-EI

Dear Ms. Cole:

Enclosed for filing in the above-referenced docket are the original and 7 copies of the Prehearing Statement of the Office of Public Counsel.

Please indicate the time and date of receipt on the enclosed duplicate of this letter and return it to our office.

Sincerely,

Erik L. Sayler  
Associate Public Counsel

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**BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION**

In re: Nuclear Cost Recovery  
Clause.

DOCKET NO.: 120009-EI

FILED: August 06, 2012

**PREHEARING STATEMENT OF THE OFFICE OF PUBLIC COUNSEL**

The Citizens of the State of Florida, through the Office of Public Counsel, pursuant to the Order Establishing Procedure in this docket, Order No.PSC-12-0078-PCO-EI, issued February 20, 2012, hereby submit this Prehearing Statement.

**APPEARANCES:**

Charles J. Rehwinkel  
Deputy Public Counsel  
Joseph A. McGlothlin/Erik L. Sayler  
Associate Public Counsels  
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

1. **WITNESSES:**

The Citizens intend to call the following witnesses, who will address the issues indicated:

<u>NAME</u>	<u>ISSUES</u>
Brian D. Smith	28, 28A, 29A
William R. Jacobs, Jr., Ph.D.	14, 16 (PEF)

DOCUMENT NUMBER-DATE

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FPSC-COMMISSION CLERK

2. EXHIBITS:

Through Brian D. Smith and William R. Jacobs, Jr., Ph.D., the Citizens intend to introduce the following exhibits, which can be identified on a composite basis:

**PEF**

- |            |  |
|------------|--|
| WRJ(PEF)-1 | Resume of William R. Jacobs, Jr.         |
| WRJ(PEF)-2 | Resumes of James P. McGaughy, Jr.        |
| WRJ(PEF)-3 | CR3 EPU Project Cost Estimates 2006-2012 |

**FPL**

- |            |  |
|------------|--|
| BDS(FPL)-1 | Resume of Brian D. Smith                       |
| BDS(FPL)-2 | Turkey Point St. Lucie Savings Allocation      |
| BDS(FPL)-3 | Equation Solved Example                        |
| WRJ(FPL)-1 | Resume of William R. Jacobs, Jr.               |
| WRJ(FPL)-2 | Resume of James P. McGaughy, Jr.               |
| WRJ(FPL)-3 | Comparison of PTN EPU to PSL EPU Scope of Work |
| WRJ(FPL)-4 | High Bridge Estimate of PTN Cost               |
| WRJ(FPL)-5 | Turkey Point EPU Costs from 2008 to 2012       |

### 3. STATEMENT OF BASIC POSITION

#### PEF

##### *Levy Nuclear Project*

On March 8, 2012, the Commission issued its Final Order No. PSC-12-0104-FOF-EI approving the stipulation and settlement agreement entered into between Progress Energy Florida (PEF), Office of Public Counsel (OPC), Florida Industrial Power Users Group (FIPUG), Florida Retail Federation (FRF), PCS Phosphate-White Springs (PCS), and Federal Executive Agency (FEA) (collectively, the Parties). Exhibit A of the settlement addressed various aspects of the Levy Nuclear Project (LNP) and specified the costs that could be recovered from customers as a result of the settlement. Therefore, PEF should neither recover any LNP costs from customers apart from those identified in this Agreement throughout the term of the settlement, nor file for any additional LNP nuclear cost recovery unless otherwise agreed to by the parties to the settlement, before the first billing cycle of January 2018. This settlement did not obviate the need for PEF to carry its burden of proof before the Commission for cost recovery of costs that will ultimately be subject to true-up; however, OPC is not disputing the filing of PEF in the 2012 proceeding.

##### *CR3 Extended Power Uprate Project*

At this time, PEF has not made a final decision as to whether to repair or retire Crystal River Unit 3 (CR3). According to public statements by Jim Rogers, the new Chief Executive Officer of Duke Energy Corporation (Duke), PEF's parent company following the merger, it is not known whether the repair or retire decision will be made in 2012 or 2013. A status conference is currently scheduled for August 13, 2012, in Docket No. 100437-EI, but it seems improbable that a decision will be made at that time or before the start of the nuclear cost recovery clause (NCRC) hearing in September. Thus, the only certainty surrounding the future of CR3 is continued uncertainty. The most reasonable approach under these circumstances would be for the Commission to defer consideration of CR3 Uprate Cost Recovery until 2013.

If the Commission nevertheless decides to consider cost recovery for CR3 in 2012, the Commission should take a very conservative approach to cost recovery. Until such time as the decision to repair or retire has been publicly announced by PEF and substantially implemented, the Citizens believe that PEF has a duty to avoid making any expenditures that are avoidable or deferrable on an Extended Power Uprate (EPU) project which may never be used and useful in the public service. Thus, PEF should take all affirmative steps in 2012 and 2013, and even looking forward to 2014, to halt or minimize all new expenditures related to the CR3 EPU project. Further, assuming the decision is made to repair CR3, EPU construction and design work that has not been contracted for or performed at this time should be deferred as late as

possible in the CR3 containment repair process, when the success of the repair and Nuclear Regulatory Commission (NRC) acceptance of the repair is reasonably assured. Likewise, any avoidable or deferrable long lead equipment (LLE) should be similarly deferred. In order to facilitate the Commission's review of the EPU expenditures, PEF should review the EPU scheduled expenditures and provide to the Commission a list identifying those EPU expenditures which are avoidable or deferrable, and those which are not. If the expenditure cannot be postponed until after the decision to repair or retire has been made, PEF should provide an explanation as to why and whether that expenditure has any salvage value.

The Commission should require PEF to provide timely updates on the status of the containment repair or retire decision to the extent that that decision affects the EPU project plan and schedule, and if necessary, provide supplemental testimony.

Until such time as the decision to repair or retire CR3 has been made by PEF, the Commission should withhold any determination of reasonableness or prudence for EPU expenditures.

While the completion of the EPU appears technically feasible, the underlying decision to repair or retire CR3 has not been made. Pending such a definitive decision, the Commission should not continue allowing advanced recovery for these expenditures. To the extent the Legislature intended Section 366.93, Florida Statutes, to apply at all to EPU projects, it certainly could not have intended that the Commission would ignore reality and blithely approve the recovery of hundreds of millions of dollars for an EPU on a nuclear unit that continues to remain out of service for an unprecedented period of up to six years. While CR3 remains undecided, the Commission should defer consideration of recovery of any dollars in 2013 for that project.

OPC supports PEF's significant and continuing efforts to repair and return CR3 to commercial service as expeditiously as possible. OPC further supports PEF completing the EPU project as economically as possible. The fuel savings associated with a repaired *and* uprated CR3 would be beneficial to the customers over the unit's remaining operational life. However, the customers do not want PEF to gamble the *customers' money* on the EPU before making a final determination to proceed with a technically feasible, and economically justified that CR3 repair. Therefore, until the decision to repair and when repair and licensability is reasonably assured, continued recovery of the EPU project costs should not be considered ripe for recovery through nuclear cost recovery clause.

If the Commission approves continued recovery for CR3 EPU, the reasonableness and prudence review should be limited only to non-avoidable or non-deferrable expenditures. It would stretch the bounds of credulity for PEF to possibly assert that any and all current and future expenditures on the CR3 EPU are critical path items that must be completed now or never. The Citizens submit that it may be reasonable to endure some delay in the implementation of the CR3 EPU, and (potentially temporarily) forego some of the benefits of an uprated CR3 so that

the avoidable or deferrable uprate costs, if any, which PEF proposes to otherwise spend now will not be wasted in the event that the presumptive repair is ultimately not carried out. For these reasons, for any expenditures which are avoidable or deferrable, the Commission should place PEF on notice through this proceeding that these expenditures will be held subject to refund.

## FPL

In response to concerns and criticisms related to FPL's uprate activities that OPC advanced through its witnesses in last year's hearing cycle, FPL assured the Commission that FPL's revised 2011 estimate of the total cost of its uprate projects was "well informed." FPL also persuaded the Commission to permit it to continue aggregating the separate plant sites of its St. Lucie and Turkey Point uprate activities into a single, composite feasibility analysis. Developments since last year's hearing have exploded FPL's assurances, and demonstrate the immediate need to impose greater accountability on FPL. In a single year, FPL's "well informed" estimate has increased by \$682 million. Of the \$682 million increase, fully \$555 million relates to increases in FPL's estimate of the cost of the Turkey Point uprate.

In Order No. PSC-09-0783-FOF-E,I the Commission indicated its view that the choice of the appropriate feasibility test may change, depending on the circumstances that prevail at the time the test is performed. The runaway costs at the Turkey Point uprate project constitute a dramatic change in circumstances that compels an evaluation of the status and feasibility of the Turkey Point uprate project on a separate, stand-alone basis. Otherwise, the Commission would be allowing FPL's consolidated, composite approach to its feasibility analysis to obscure the impact of an out-of-control project on customers who are asked to bear the soaring costs of that project. OPC witnesses have performed a stand-alone analysis of the Turkey Point uprate project. It demonstrates that, even under deliberately conservative (that is to say, favorable to FPL) assumptions, the Turkey Point uprate project is not cost-effective at current estimates. Further, testimony will establish that FPL ignored predictions by its consulting engineers—whom FPL engaged specifically to advise on total costs of the Turkey Point uprate—that the Turkey Point uprate project costs would reach the exorbitant levels that FPL now belatedly acknowledges. Had FPL acted on this advice timely, and had it then performed a separate evaluation of the Turkey Point uprate, it would have been in a position to curtail a growingly infeasible project instead of completing it now at enormous cost. In light of FPL's mismanagement of that information, the Commission should take action to protect customers from the effects of FPL's imprudently slow realization. As a proxy for the imprudent costs—which, because the alternative was not pursued, cannot be measured directly--OPC asks the Commission to hold FPL to its most recent estimate of the costs of the Turkey Point uprate project—which, again,

adds \$555 million to last year's estimate. FPL characterizes OPC's request as a "hard cap." It is instead the appropriate regulatory response to FPL's insistence on a "blank check."

#### 4. STATEMENT OF FACTUAL ISSUES AND POSITIONS

##### Generic Legal Issue

**Issue 1: Does Section 366.93, Florida Statutes, authorize the Commission to disallow recovery of all, or a portion of, the carrying costs prescribed by Section 366.93(2)(b), Florida Statutes? (Staff – in lieu of OPC's proposed issue 2)**

OPC: This statute neither authorizes nor prohibits the disallowance of carrying charges *explicitly*. However, Section 366.93, Florida Statutes (F.S.), allows the Commission to disallow the recovery of any costs, including carrying costs, which the Commission determines to be unreasonable or imprudently incurred. Similarly, under Chapter 366, F.S., the Commission has the authority, power, and jurisdiction to disallow for recovery of *any* costs, including carrying costs, which the Commission determines to be unreasonable or imprudently incurred. Section 366.93(2)(b), F.S., does not prohibit the disallowance of carrying charges. A plain reading of the statute reveals that subsection (2)(b) merely *specifies how carrying charges will be calculated* if a utility had requested a determination of need for a nuclear or integrated gasification combined cycle power plant on or before December 31, 2010. Presumably, if a utility sought a determination of need after this date which was approved, carrying charges for that project would be calculated based upon the utility's Commission approved allowance for funds used during construction (AFUDC) rate and not Section 366.93, F.S.

##### Progress Energy Florida, Inc., Issues

###### PEF – Legal/Policy

**Issue 2: Does the Commission have the authority to disallow recovery of any AFUDC equity on the Crystal River Unit 3 Uprate project in 2012 and 2013 due to the delay caused by the lack of implementation of a final decision to repair or retire Crystal River Unit 3? If yes, should the Commission exercise this authority and what amount should it disallow, if any? (OPC – contested)**

OPC: Yes. Under Chapter 366, F.S., the Commission has broad authority, power, and jurisdiction to review and to disallow the recovery of any costs, including carrying costs, which the Commission determines to be unreasonable or imprudently incurred. That is an undisputed facet of ratemaking. Section 366.93, F.S., does somewhat narrow the scope of the Commission's broad authority, power, and jurisdiction to the context of projects satisfying the requirements of this statute, but it does not limit or eliminate its inherent authority to review the requested costs, including the AFUDC equity component of carrying charges, being requested for recovery for reasonableness or prudence. Based upon the testimony and discovery submitted in this docket, it is undisputed that there is a chance the CR3 EPU may never be completed in light of PEF's failure to make a final decision to repair or retire the unit. OPC is not disputing the non-equity debt component of the carrying charges. The equity component represents the shareholder profit from the project and this profit compounds and builds the longer the project languishes due to decisionmaking, the pace of which is in the control of the shareholders. It is very important to PEF's customers that CR3 be repaired and returned to commercial service, if technically and economically feasible. Thus, it is important that PEF move forward without any undue delay. OPC recognizes the complexity of the decision facing PEF with regard to the repair or retire decision; however, PEF should not delay that decision unduly and be rewarded by an increase in the shareholder profit that is growing as months turn into years in this docket. The profit incentive should be removed from the equation and the increase to the accrued equity component of AFUDC caused by a delay in the implementation of a final decision to repair or retire Crystal River Unit 3 should *not* inure to the benefit of PEF shareholders.

**Issue 3: Does the Commission have the authority to defer all determinations of prudence and reasonableness for the Crystal River Unit 3 Uprate project (and, thus, defer cost recovery in 2013) until a final decision to repair or retire has been implemented? If yes, should the Commission exercise this authority? (OPC – contested)**

OPC: Yes. On August 10, 2011, after stipulation by the parties to Docket No. 110009-EI, the Commission voted to approve PEF's request to defer the Commission's review of the reasonableness of PEF's 2011 and 2012 CR3 Uprate expenditures and associated carrying costs until the 2012 NCRC proceedings. The Commission also voted to defer the review of the long-term feasibility of completing the CR3 EPU until 2012. For 2009 & 2010 CR3 EPU costs, the parties stipulated that they did not object to the Commission making a final prudence determination for those costs pursuant to Sections 366.93 and 403.519(4), F.S. in the 2011 NCRC docket. By so stipulating, the parties maintained that they did not waive, concede, or give up their right to offer any testimony in this or any



other Commission docket. Therefore, there is Commission precedent to defer a determination of reasonableness and prudence. At the time of the 2011 NCRC hearing, the parties understood that PEF was actively working toward a final decision to repair or retire CR3, and given the March 2011 delamination event, the testimony and exhibits provided by PEF were stale and no longer accurate. Nearly 12 months have passed since the Commission voted to defer approval, and PEF is still actively working toward a final decision to repair or retire CR3. Hopefully, PEF will reach a decision in before the 2013 hearing cycle commences. However, until such time as that decision is rendered, the Commission should withhold all determinations of reasonableness for 2012 and 2013 costs and any reasonableness or prudence reviews for 2011 EPU costs.

Similarly, the Commission has the authority to defer the necessary reasonableness and prudence reviews for the CR3 EPU because of the supervening lack of a final decision to repair or retire CR3. The Commission could determine that any decision related to CR3 EPU expenditures is not ripe for determination because it is unknown whether CR3 itself will return to commercial operation.

According to Section 366.93(6), “If the utility elects not to complete *or is precluded from completing* construction of the nuclear power plant, . . . the utility shall be allowed to recover all prudent preconstruction and construction costs. . . .” Therefore, if the Commission does not review and determine that the preconstruction and construction costs expended by a utility are prudent, then the utility cannot receive recovery of those costs even if the utility is later precluded from completing the project. The retirement of CR3 would necessarily preclude PEF from completing the EPU.

Therefore, it is important that the Commission withhold any determination of prudence for 2011 costs, and similarly withhold any determination of the reasonableness of the 2012 and 2013 costs being sought for recovery. Otherwise, there is no rational incentive for the utility to take a long, hard look at what EPU expenditures can be avoided, delayed, or deferred until the final decision to repair CR3 is made. This is the only means by which this Commission can prevent PEF from potentially throwing good money after bad, in the hopes CR3 can return to service according to the very optimistic schedule put forward by PEF. If the Commission turns off the money spigot and defers consideration of the recovery of CR3 EPU costs, PEF hopefully will stop expending money and incurring obligations related to the EPU project. If PEF is able to repair the unit and complete the EPU, PEF will be able to recover the *carrying costs* (debt and equity components) on any dollars not recovered during the interim period.

**PEF – Levy Units 1 & 2 Project**

**Issue 4: Do PEF’s activities since January 2011 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.?**

OPC: See settlement approved by Order No. PSC-12-0104-FOF-EI, issued March 8, 2012, in Docket No. 120022-EI. The settlement however does not relieve PEF from demonstrating to the Commission that its activities since January 2011 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.

**Issue 5: Should the Commission approve what PEF has submitted as its 2012 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?**

OPC: See settlement approved by Order No. PSC-12-0104-FOF-EI, issued March 8, 2012, in Docket No. 120022-EI. The settlement however does not relieve PEF from submitting its 2012 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., nor the Commission’s determination of long-term feasibility.

**Issue 6: What is the current total estimated all-inclusive cost (including AFUDC and sunk costs) of the proposed Levy Units 1 & 2 nuclear project?**

OPC: See settlement approved by Order No. PSC-12-0104-FOF-EI, issued March 8, 2012, in Docket No. 120022-EI. Evidence adduced in this docket will indicate the total estimated all-inclusive cost for the planned Levy Units 1 & 2.

**Issue 7: What is the current estimated planned commercial operation date of the planned Levy Units 1 & 2 nuclear facility?**

OPC: See settlement approved by Order No. PSC-12-0104-FOF-EI, issued March 8, 2012, in Docket No. 120022-EI. Evidence adduced in this docket will indicate the current estimated planned commercial operation date of the planned Levy Units 1 & 2 nuclear facility.

**Issue 8: Should the Commission find that, for 2011, 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?**

OPC: See settlement approved by Order No. PSC-12-0104-FOF-EI, issued March 8, 2012, in Docket No. 120022-EI. The settlement however does not relieve PEF from proving that its project management, contracting, accounting and cost oversight controls were reasonable and prudent for the Levy Units 1 & 2 project.

**Issue 9: What system and jurisdictional amounts should the Commission approve as PEF's final 2011 prudently incurred costs and final true-up amounts for the Levy Units 1 & 2 project?**

OPC: See settlement approved by Order No. PSC-12-0104-FOF-EI, issued March 8, 2012, in Docket No. 120022-EI. These amounts are specified in the settlement.

**Issue 10: What system and jurisdictional amounts should the Commission approve as reasonably estimated 2012 costs and estimated true-up amounts for PEF's Levy Units 1 & 2 project?**

OPC: See settlement approved by Order No. PSC-12-0104-FOF-EI, issued March 8, 2012, in Docket No. 120022-EI. These amounts are specified in the settlement.

**Issue 11: What system and jurisdictional amounts should the Commission approve as reasonably projected 2013 costs for PEF's Levy Units 1 & 2 project?**

OPC: See settlement approved by Order No. PSC-12-0104-FOF-EI, issued March 8, 2012, in Docket No. 120022-EI. These amounts are specified in the settlement.

**PEF – Crystal River Unit 3 Uprate Project**

**Issue 12: Should the Commission approve what PEF has submitted as its 2012 annual detailed analyses of the long-term feasibility of completing the Crystal River Unit 3 Uprate project, as provided for in Rule 25-6.0423, F.A.C.? If not, what action, if any, should the Commission take?**

OPC: No. Until a final decision to repair or retire has been implemented, the Commission should defer approving what PEF has submitted as its 2012 annual detailed analyses of the long-term feasibility of completing the Crystal River Unit 3 Uprate project, as provided for in Rule 25-6.0423, F.A.C. While the long-term feasibility remains theoretically possible, until the decision to repair or retire has been made, it is not ripe to approve PEF's feasibility study.

**Issue 13: Should the Commission find that, for 2011, PEF's project management, contracting, accounting and cost oversight controls were reasonable and prudent for the Crystal River Unit 3 Uprate project? If not, what action, if any, should the Commission take?**

OPC: No. Until a final decision to repair or retire has been implemented, the Commission should defer determining that PEF's project management, contracting, accounting and cost oversight controls were reasonable and prudent for the Crystal River Unit 3 Uprate project.

**Issue 14: Were all of the actual Crystal River Unit 3 Uprate project expenditures prudently incurred or expended in 2011 in the absence of a final decision to repair or retire Crystal River Unit 3 in 2011?**

OPC: No. Until a final decision to repair or retire has been implemented, the Commission should defer determining the prudence of 2011 expenditures. However, should the Commission decide not defer the determination of prudence on 2011 expenditures, evidence to be adduced at hearing will demonstrate that the portion, if any, of EPU expenditures that could have been deferred or delayed or avoided, but were not, were not prudently incurred.

**Issue 15: What system and jurisdictional amounts should the Commission approve as PEF's 2011 prudently incurred costs and final true-up amounts for the Crystal River Unit 3 Uprate project?**

OPC: No. Until a final decision to repair or retire has been implemented, the Commission should defer consideration of approval of PEF's 2011 requested costs and final true-up amounts for the Crystal River Unit 3 Uprate project. However, should the Commission

decide not defer the determination of prudence on 2011 expenditures, then the portion, if any, of EPU expenditures that could have been deferred or delayed or avoided, but were not, should be reduced from the system and jurisdictional amount being requested.

**Issue 16: Is it reasonable for PEF to incur or expend all of the estimated and projected Crystal River Unit 3 Uprate project expenditures in 2012 and 2013 in the absence of a final decision to repair or retire CR3?**

OPC: No. Until a final decision to repair or retire has been implemented, PEF should cease incurring or expending any EPU costs, and the Commission should place PEF on notice that avoidable or deferrable expenditures will be held subject to refund. However, the Commission does not defer the determination of reasonableness on 2012 and 2013 expenditures, evidence to be adduced at hearing will demonstrate that the portion, if any, of EPU expenditures that could be deferred or delayed or avoided, but are not, will not reasonably incurred.

**Issue 17: What system and jurisdictional amounts should the Commission approve as reasonably estimated 2012 costs and estimated true-up amounts for PEF's Crystal River Unit 3 Uprate project?**

OPC: None. Absent PEF implementing of a final decision to proceed with a repair, the Commission should defer consideration of recovery of any CR3 EPU costs until after the 2012 hearing cycle. *If the Commission nevertheless proceeds, the Citizens believe cost recovery should not exceed the amounts minimally needed to fulfill contractual or other obligations required to keep the uprate project viable for a repaired CR3.*

**Issue 18: What system and jurisdictional amounts should the Commission approve as reasonably projected 2013 costs for PEF's Crystal River Unit 3 Uprate project?**

OPC: None. Absent PEF implementing of a final decision to proceed with a repair, the Commission should defer allowing recovery of any CR3 EPU costs until after the 2012 hearing cycle. If the Commission nevertheless proceeds, the Citizens believe cost recovery should not exceed the amounts minimally needed to fulfill contractual or other obligations required to keep the uprate project viable for a repaired CR3.

**PEF – Final Fall-out Issue**

**Issue 19: What is the total jurisdictional amount to be included in establishing PEF's 2013 Capacity Cost Recovery Clause factor?**

OPC: The total jurisdictional amount will be a fall-out from other decisions. Recovery should be confined to the LNP project subject to the settlement. Recovery of CR3 EPU costs should be deferred from consideration until 2013.

**Florida Power & Light Company Issues**

**FPL – Turkey Point Units 6 & 7 Project**

**Issue 20: Do FPL's activities since January 2011 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.?**

OPC: Because FPL is pursuing an approach that limits expenses to minimal licensing activities to the extent possible, OPC does not contest FPL's approach to Turkey Point Units 6&7 or expenses related to that approach at this time.

**Issue 21: Should the Commission approve what FPL has submitted as its 2012 annual detailed analyses of the long-term feasibility of completing the Turkey Point Units 6 & 7 project, as provided for in Rule 25-6.0423, F.A.C.? If not, what action, if any, should the Commission take?**

OPC: OPC does not contest FPL's approach to Turkey Point Units 6&7 or expenses related to that approach at this time.

**Issue 22: What is the current total estimated all-inclusive cost (including AFUDC and sunk costs) of the proposed Turkey Point Units 6 & 7 nuclear project?**

OPC: No position.

**Issue 23: What is the current estimated planned commercial operation date of the planned Turkey Point Units 6 & 7 nuclear facility?**

OPC: No position

**Issue 24: Should the Commission find that FPL's 2011 project management, contracting, accounting and cost oversight controls were reasonable and prudent for the Turkey Point Units 6 & 7 project?**

OPC: No position



**Issue 25: What system and jurisdictional amounts should the Commission approve as FPL's final 2011 prudently incurred costs and final true-up amounts for the Turkey Point Units 6 & 7 project?**

OPC: No Position.

**Issue 26: What system and jurisdictional amounts should the Commission approve as reasonably estimated 2012 costs and estimated true-up amounts for FPL's Turkey Point Units 6 & 7 project?**

OPC: No Position.

**Issue 27: What system and jurisdictional amounts should the Commission approve as reasonably projected 2013 costs for FPL's Turkey Point Units 6 & 7 project?**

OPC: No Position.

## **FPL – St. Lucie Units 1&2 and Turkey Point Units 3&4 Extend Power Uprate Project**

**Issue 28: Should the Commission approve what FPL has submitted as its 2012 annual detailed analyses of the long-term feasibility of completing FPL’s Extended Power Uprate project, as provided for in Rule 25-6.0423, F.A.C.? If not, what action, if any, should the Commission take?**

OPC: For the reasons stated in OPC’s Statement of Basic Position and in its response to Issue 28A, OPC asserts that FPL’s feasibility study distorts the economic feasibility of its uprate activities by masking the impact on customers of the runaway costs that FPL is experiencing at its Turkey Point uprate project. The Commission should accept the study of the feasibility of FPL’s Turkey Point uprate project sponsored by OPC witness Brian Smith. This study separates the uprate project costs by plant site based on information provided by FPL, then (as an extremely conservative proxy for actual data) assigns 50% of fuel savings from the projects to each plant site. Given that the Turkey Point units have 14 fewer remaining unit-years of life than the St. Lucie units, and there are no material differences between fuel costs or capacity factors between the plant sites, the simplifying assumption of the 50/50 assignment of fuel savings is enormously favorable to the cost-effectiveness of the Turkey Point uprate project. In spite of this advantageous (to FPL) assumption, Mr. Smith’s exhibit shows the Turkey Point uprate project would result in net costs, rather than net benefits, based on FPL’s current estimate of total costs.

**Issue 28A: Based on the evidence, under current circumstances, should the Commission evaluate the economic feasibility of the Turkey Point and St. Lucie Extended Power Uprate activities separately? (OPC – contested)**

OPC: Yes. In Order No. PSC-09-0783-FOF-EI, the Commission implicitly acknowledged that the choice of the appropriate feasibility approach is a function of the circumstances that exist at the time of study. The evidence demonstrates that the cost of the Turkey Point uprate project increased by \$555 million within the last year. Dr. Jacobs’ exhibit WRJ-3(FPL) shows

significant differences in the nature and scope of projects that belie FPL's rationale for continuing to assess the economic feasibility of St. Lucie and Turkey Point uprate projects on a consolidated basis. Based on the change of circumstances presented by the astonishing \$555 million increase in FPL's cost estimate from a year ago, the Commission should evaluate the economic feasibility of FPL's Turkey Point uprate project separately. The separate evaluation will enable the Commission to identify, and take action to protect customers from, the impact of soaring Turkey Point costs on the viability of that project.

**Issue 29: Should the Commission find that FPL's 2011 project management, contracting, accounting and cost oversight controls were reasonable and prudent for FPL's Extended Power Uprate project?**

OPC: See OPC's position for Issue 29A.

**Issue 29A: Should the Commission find that FPL managed the extended power uprate activities at Turkey Point in a reasonable and prudent manner? If not, what action should the Commission take? (OPC – contested)**

OPC: No. The evidence establishes that FPL ignored predictions by its consulting engineers that the costs of the Turkey Point uprate project would reach the soaring levels it now is belatedly projecting. Had FPL acted on this advice in a timely fashion, and had FPL been concerned about the impact of skyrocketing costs on the viability of the Turkey Point uprate project from customers' perspective, it would have assessed the Turkey Point uprate project separately and curtailed the project early in its life. At this advanced stage of the project, OPC believes FPL should complete the project. However, the Commission should recognize that, through its composite depiction of economic feasibility in the aggregate, FPL is attempting to use a more cost-effective project (St. Lucie uprate) to justify one that is not cost-effective to

customers (Turkey Point uprate). The Commission should protect customers from bearing the impact of FPL's imprudent management of the Turkey Point uprate. OPC submits the Commission should hold FPL to the current estimate of the costs of completing the Turkey Point uprate project.

**Issue 30: What system and jurisdictional amounts should the Commission approve as FPL's final 2011 prudently incurred costs and final true-up amounts for FPL's Extended Power Uprate project?**

OPC: See OPC's position on Issue 29A.

**Issue 31: What system and jurisdictional amounts should the Commission approve as reasonably estimated 2012 costs and estimated true-up amounts for FPL's Extended Power Uprate project?**

OPC: See OPC's position on Issue 29A.

**Issue 32: What system and jurisdictional amounts should the Commission approve as reasonably projected 2013 costs for FPL's Extended Power Uprate project?**

OPC: See OPC's position on Issue 29A.

**FPL – Final Fall-out Issue**

**Issue 33: What is the total jurisdictional amount to be included in establishing FPL's 2013 Capacity Cost Recovery Clause factor?**

OPC: See OPC's position on Issue 29A.

**5. STIPULATED ISSUES:**

None.

**6. PENDING MOTIONS:**

**7. STATEMENT OF PARTY'S PENDING REQUESTS OR CLAIMS FOR CONFIDENTIALITY:**

None.

**8. OBJECTIONS TO QUALIFICATION OF WITNESSES AS AN EXPERT:**

None at this time.

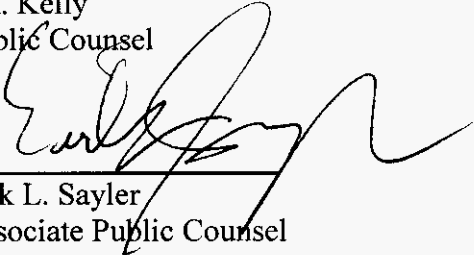
9. STATEMENT OF COMPLIANCE WITH ORDER ESTABLISHING PROCEDURE:

There are no requirements of the Order Establishing Procedure with which the Office of Public Counsel cannot comply.

Dated this 6<sup>th</sup> day of August, 2012

Respectfully submitted,

J.R. Kelly  
Public Counsel



Erik L. Sayler  
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**CERTIFICATE OF SERVICE**

**I HEREBY CERTIFY** that a true and foregoing **PREHEARING STATEMENT OF**

**THE OFFICE OF PUBLIC COUNSEL** has been furnished by electronic mail and U.S. Mail

on this 6<sup>th</sup> day of August, 2012, to the following:

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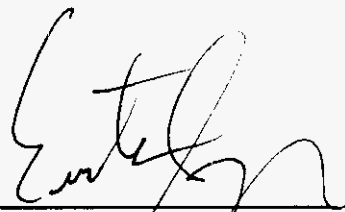
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