

BEFORE THE PUBLIC SERVICE COMMISSION

In re: Petition by Progress Energy Florida, Inc.
to recover costs of Crystal River Unit 3 uprate
through fuel clause.

DOCKET NO. 070052-EI
ORDER NO. PSC-07-0625-PHO-EI
ISSUED: July 31, 2007

Pursuant to Notice and in accordance with Rule 28-106.209, Florida Administrative Code (F.A.C.), a Prehearing Conference was held on July 23, 2007, in Tallahassee, Florida, before Commissioner Matthew M. Carter II, as Prehearing Officer.

APPEARANCES:

JOHN T. BURNETT, ESQUIRE, and R. ALEXANDER GLENN, ESQUIRE,
Progress Energy Service Company, LLC, 299 1st Avenue North, P. O. Box 14042,
St. Petersburg, FL 33733-4042, and JAMES MICHAEL WALLS, ESQUIRE,
and DIANNE M. TRIPLETT, ESQUIRE, Carlton Fields, P. O. Box 3239, 4221
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On behalf of PROGRESS ENERGY FLORIDA, INC. (PEF).

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PATRICIA CHRISTENSEN, ESQUIRE Office of Public Counsel, c/o The
Florida Legislature, 111 West Madison Street, Room 812, Tallahassee, Florida
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On behalf of the Citizens of the State of Florida (OPC).

MICHAEL B. TWOMEY, ESQUIRE, P. O. Box 5256, Tallahassee, Florida
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On behalf of AARP (AARP).

JOHN W. MCWHIRTER, JR., ESQUIRE, McWhirter, Reeves & Davidson, P.A.,
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On behalf of Florida Industrial Power Users Group (FIPUG).

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White Springs (White Springs).

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On behalf of Florida Retail Federation (FRF).

DOCUMENT NUMBER-DATE

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FPSC-COMMISSION CLERK

LISA C. BENNETT, ESQUIRE, and KEINO YOUNG, ESQUIRE, Florida Public Service Commission, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850

On behalf of the Florida Public Service Commission (Staff).

PREHEARING ORDER

I. CASE BACKGROUND

On September 22, 2006, Progress Energy Florida (PEF) filed a Petition for Determination of Need for Expansion of an Electrical Power Plant, for Exemption from Rule 25-22.082, Florida Administrative Code (F.A.C.), and for Cost Recovery through the Fuel Cost Recovery Clause in Docket No. 060642-EI. On December 22, 2006, the hearing officer bifurcated the proceeding and a separate docket, Docket Number 070052-EI, was opened to consider the cost recovery aspect of PEF's petition. Office of Public Counsel (OPC), AARP, Florida Industrial Power Users Group (FIPUG), Florida Retail Federation (FRF), and PCS Phosphate – White Springs (White Springs) intervened in this docket.

The electrical power plant is Crystal River Unit 3 (CR3), a nuclear power plant at PEF's Crystal River site. PEF proposes to expand the existing nuclear power plant to increase generating capacity from 900 megawatts (MW) to 1080 MW. The proposed increase will be completed in three phases beginning in 2007 and ending in 2011. PEF is seeking to recover the costs of the expansion of CR3 through the fuel cost recovery clause.

II. CONDUCT OF PROCEEDINGS

Pursuant to Rule 28-106.211, Florida Administrative Code (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, Florida Statutes (F.S.). This hearing will be governed by said Chapter, Chapter 120, F.S., 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 long-standing policy of this Commission that all Commission hearings be open to the public at all times. The Commission also recognizes its obligation pursuant to Section 366.093, F.S., to protect proprietary confidential business information from disclosure outside the proceeding. Therefore, any party wishing to use any proprietary confidential business information, as that term is defined in Section 366.093, F.S., at the hearing shall adhere to the following:

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

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

V. PREFILED TESTIMONY AND EXHIBITS; WITNESSES

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

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

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

VI. ORDER OF WITNESSES

Each witness whose name is preceded by a plus sign “+” will present direct and rebuttal testimony together. The witness whose name is preceded by an asterisk “*” may be taken out of order.

<u>Witness</u>	<u>Proffered By</u>	<u>Issues #</u>
<u>Direct</u>		
+Daniel L. Roderick	PEF	1
Samuel S. Waters	PEF	1
Javier Portuondo	PEF	1-7
Patricia W. Merchant	OPC	1,3
Daniel J. Lawton	OPC	1,3,4,5
*Jeffrey Pollock	FIPUG	1-7
<u>Rebuttal</u>		
Javier Portuondo	PEF	1-7

VII. BASIC POSITIONS

PEF: PEF seeks a determination that the costs of the CR3 Uprate should be recovered through the fuel cost recovery clause (“fuel clause”), pursuant to Commission Orders including Order Number 14546. The CR3 Uprate will provide PEF’s customers substantial fuel savings expected to be in excess of \$2.6 billion with an expected net present value of the savings to costs of \$320 million to PEF’s retail customers. The CR3 Uprate achieves these savings by displacing fossil fuel and purchased power costs from fossil fuel generation with additional nuclear

generation, thus, further enhancing fuel diversity on PEF's system. Indeed, this Commission determined in Order Number PSC-07-0119-FOF-EI, the CR3 Uprate is not needed for reliability but rather to achieve fuel cost savings and fuel diversity.

The Commission has long sought to encourage innovative utility projects that reduce fossil fuel costs to customers by providing the ability for cost recovery under the Fuel Clause. The CR3 Uprate is such a project. The Company pursued the CR3 Uprate because it provided significant fuel savings to customers and not because additional growth in customers or customer usage provided the revenues to pay for the costs of the project. The Company pursued the CR3 Uprate under Order 14546 because the project's substantial fuel savings offset the project's costs and recovery was appropriate under the Commission's order.

In Order 14546 the Commission determined that cost recovery under the Fuel Clause is authorized when the costs (1) were not anticipated and included in current base rates and (2) the costs generate fuel savings for customers. In fact, the Commission authorized Florida Power & Light to recover the capital costs of its thermal uprate to its nuclear plant under Order 14546 because the costs generated fuel savings and were not included in base rates. The costs of the CR3 Uprate Project were not anticipated and they are not included in the Company's current base rates and the CR3 Uprate generates substantial fuel savings for PEF's customers. The Commission should, therefore, grant PEF's petition requesting that the Commission find that the CR3 Uprate costs are eligible for cost recovery under the Fuel Clause.

No one can or does dispute that the CR3 Uprate project benefits PEF's customers. Intervenors add terms or tests to Order 14546 that are nowhere found in the Commission's Order providing for cost recovery under the Fuel Clause for capital costs not included in base rates that are incurred to generate fuel savings to customers. There is no requirement nor could there be that the costs "not recognized or anticipated in the cost levels used to determine current base rates" should be "volatile" or recoverable in future base rates and there is no "earnings" test under Order 14546. Intervenors want to change the Commission's policy in Order 14546 to not apply it to PEF's petition.

Indeed, if the Commission accepted Intervenors' interpretation of Order 14546, it would render the policy set forth in Item 10 meaningless. Intervenors argue that PEF can ask for a new base rates proceeding to recover these costs. But PEF always has the ability to initiate a new base rates proceeding. In fact, it could have initiated base rates proceedings in the former cases where PEF requested recovery of the conversion costs for its peaker units. But this Commission wanted to encourage projects that result in fuel savings by allowing recovery, under Item 10, through the fuel clause. In this case, PEF was encouraged by this policy to do this uprate for the significant fuel savings.

PEF's petition is not precluded by the 2005 rate case settlement. This is not a new surcharge but a request for recovery under an existing cost recovery clause under established Commission policy recognizing such recovery. Nothing in the 2005 rate case settlement agreement precludes such recovery under existing cost recovery clauses including Order 14546. Moreover, because the project costs are offset by expected fuel savings there is no surcharge at all to the customer.

Intervenors challenge PEF's cost and fuel savings estimates without proffering their own estimates or any reason to believe that PEF's costs and fuel savings estimates are not reasonable. The fact that actual costs might change does not mean PEF's estimates are not reasonable and ignores the fact that PEF's net fuel savings to costs are estimated at \$320 million. PEF has reasonably demonstrated that the fuel savings exceed all elements of the Uprate costs. Intervenors also argue that some of the Uprate's project costs, for example, transmission upgrades, should be denied recovery but they ignore that these costs would not have been incurred without the CR3 Uprate. They are, therefore, necessarily a part of the Uprate project.

PEF's request for cost recovery under the Fuel Clause tracks the Commission's treatment of the recovery and allocation of costs of other capital projects that were recovered through the fuel clause under Order 14546. In any event, PEF is seeking a determination that the Uprate costs are eligible for recovery under the Fuel Clause under Order 14546 and that the actual period of cost recovery will depend on the demonstrated fuel savings. Similarly, the actual recovery of PEF's project costs will be subject to a determination that they are reasonable and prudent as they are incurred and subject to inclusion in the Fuel Clause.

For all these reasons, as more fully developed in PEF's pre-filed amended testimony and exhibits, PEF respectfully requests that the PSC grant the recovery of the costs of the CR3 Uprate through the fuel clause.

OPC:

As it reviews PEF's request for authority to flow some \$381 million (PEF's early estimate) of nuclear generating plant costs and associated capital items through the fuel cost recovery clause, the Commission must keep the larger regulatory and ratemaking picture in focus. The principal tool that the Commission employs in the economic regulation of electric utilities is the base rate mechanism. Base rates are the culmination of an all-encompassing analysis of the utility's overall financial and operating condition. Base rate proceedings are therefore the Commission's principal means of accomplishing a holistic, rather than piecemeal, approach to regulation.

Once set, a utility's base rates are designed to function without change in an environment of fluctuating costs and revenues as long as the utility earns a return that falls within a reasonable range. This means the utility uses earnings

generated by base rates to defray and recover any increases in costs, just as it enjoys the enhanced earnings it derives from any decreases in other costs and/or increases in revenues, as long as the overall relationship between costs and revenues results in a reasonable return on the utility's investment. If and when the relationship between all costs and all revenues no longer yields a fair return, the utility's recourse is to request an increase in base rates.

Allowing a utility to bypass the base rate process and instead pass a new, base rate-related cost through the fuel cost recovery clause would have the inequitable effect of increasing a customer's total bill, even though an overall review may well indicate that no increase in base rate is justified due to the decline in other costs or an increase in revenues. The Commission must therefore protect customers by strictly enforcing the eligibility criteria of the fuel cost recovery clause.

While in Order No. 14546 the Commission indicated that it would consider, on a case-by-case basis, requests to authorize passing "base rate"-related costs through the fuel cost recovery mechanism when the costs would achieve fuel savings, the illustration it provided in that order demonstrates the limited scope of its intent. While the Commission's policy on this matter has evolved, and over time it has allowed utilities to pass costs through the clause in a number of circumstances, recently the Commission has begun to recalibrate that policy in a manner that better protects customers' interests. It should continue the process of refining and formulating its policy to protect customers from PEF's overreaching requests in this docket. The request that initiated this case is "over the top" in terms of its effort to disadvantage customers in order to skew benefits toward the requesting utility. The fact that PEF has an ample opportunity to submit a base rate case prior to expending the vast majority of amounts on the project obviates the need to depart from normal ratemaking to provide an "incentive," and so distinguishes this case from the reasoning that underlay the limited departure from the base rate mechanism contemplated in Order No. 14546.

Further, PEF's proposed short capital recovery periods—which PEF did not disclose in its petition or testimony—would require customers to bear all of the costs of the project without receiving meaningful fuel savings until at least 2016, thereby creating severe intergenerational inequities between the customers who would pay for the project immediately and those who may, at some point in the future, receive the benefits. Typically, the accelerated depreciation a utility employs for tax purposes gives rise to the collection of revenues earmarked for taxes that actually won't be paid until later. In turn, customers benefit in this process when the utility uses those funds as "cost-free capital" in the base rate process. In this case, PEF has uniquely proposed capital recovery periods that are even shorter than the lives it can use for tax purposes, meaning that under PEF's proposal customers would forgo the benefits of deferred taxes on a net present value basis.

In addition, because the fuel cost recovery clause incorporates a true-up mechanism, there is little risk that the utility will not collect amounts the Commission authorizes it to pass through the clause. PEF proposes to add a return of 11.75% (after taxes) on its capital expenditures. This return is well above the risk-free rate, better represented by the cost of debt, overstates PEF's related capital costs, and so would result in rates and charges to consumers that are unreasonably and unjustifiably high. For all of these reasons, the Commission should deny PEF's request and instruct PEF to recover the investment in the uprate project through base rates in the normal fashion.

AARP: AARP adopts the basic position of the Office of Public Counsel.

FIPUG: FIPUG supported the construction of a cost effective Nuclear Plant uprate and exemption from the bid rule because of the unique circumstances of the uprate. FIPUG opposes the proposal to recover nuclear uprate costs through the fuel clause first, it would be a direct violation of the Settlement in PEF's 2005 base rate case (Docket No. 050078). Among other things, the Settlement required that base rates remain frozen through December 2009. Second, the proposed uprate does not qualify for cost recovery through the fuel clause because (a) the costs are not fuel-related and they are not volatile; (b) nuclear uprates are neither new nor innovative; and (c) the additional capacity to be provided by the uprate is needed by PEF to meet its projected peak demands and to maintain the required reserve margins. Third, collecting these costs through the fuel clause would create a double-recovery, because PEF's base rate already reflects the recovery of nuclear capacity costs. Fourth, the proposed fuel clause recovery is improper because (a) the costs at issue are properly classified as demand-related; (b) it would result in cost shifting because demand-related costs would be recovered on a kWh basis, and (c) the proposed 10-year amortization period would fail to match the costs of the uprate (which is expected to last through 2036), with the projected benefits, which are also projected to occur through 2036 the projected remaining life of CR3, (if PEF's planned license extension is granted).

Should the Commission, nevertheless, allow special cost recovery, the nuclear uprate costs properly allocable to PEF's retail customers should be recovered through the Capacity Cost Recovery Clause (CCRC). With the exception of the transmission portion of PEF's request, the costs should be amortized over the expected remaining life of CR3. Additional transmission costs should be amortized over not less than 40 years, consistent with the expected useful life of PEF's transmission facilities.

WHITE SPRINGS: White Springs opposes fuel clause recovery of all phases of the proposed uprate to Crystal River unit 3. The character and magnitude of the planned investment

compels recovery of these costs in base rates. White Springs generally supports the positions advocated by FIPUG and the Office of Public Counsel.

FRF: The Commission should deny Progress's petition for recovery of costs associated with the CR3 Uprate Project through the Fuel Clause, through any other cost recovery clause, or through any other means that would allow Progress to realize recovery of such costs before the expiration of its current rate case stipulation. The costs at issue in this case are predominantly, if not entirely, capital costs of a type that is normally recovered through base rates, and accordingly, recovery through the Fuel Clause or any other cost recovery clause is inappropriate.

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

ISSUE 1: **Should the Commission authorize clause recovery of the prudent and reasonable costs of the following:**

A. Phase 1 of PEF's CR3 Uprate Project?

POSITIONS

PEF: Yes, the CR3 Uprate costs (1) are not recognized or anticipated in the cost levels used to determine PEF's current base rates and (2) the costs generate fuel savings for customers. Thus the project satisfies the requirements of Order 14546, which creates an ability for utilities to incur costs to generate fuel savings. Recovery through the fuel clause for all the CR3 Uprate costs, consistent with PEF's position to Issue 3 below, should therefore be granted.

The costs associated with Phase 1, or the MUR phase, of the CR3 Uprate project should be recovered through the fuel clause, consistent with PEF's position to Issue 3 below. This phase satisfies Order 14546. Order 14546 does not contain an "earnings test" so it is irrelevant whether PEF could absorb these costs in base rates without affecting its rate of return.

OPC: No. Phase I of the CR3 nuclear uprate is related to plant instrumentation and associated calculations to allow measurement uncertainty recovery (MUR) which is scheduled to be constructed in 2007. According to PEF, the MUR is expected to add 12 thermal megawatts (MWe) for a cost of \$6.5 million. The MUR instrumentation and associated costs are plant and represent an investment in plant by PEF.

The costs of the MUR phase are not volatile, and are not fuel-related in the sense that would meet the criteria of the fuel cost recovery clause. PEF's proposal to collect the costs in a single year, which PEF did not disclose in its petition or testimony, is patently unreasonable. Because the true-up mechanism renders the fuel cost recover clause risk-free, PEF's proposed rate of return on its Phase 1 investment associated with its fuel clause proposal would overstate its capital costs and result in unreasonably high rates and charges.

Further, base rates are the normal and traditional method for utility to recover its investment in plant. Base rates are designed to allow the utility the opportunity to recover all of its prudent operating costs and a reasonable rate of return on its investment in utility plant. Ratemaking principles contemplate that costs and revenues will fluctuate over time from those used in setting the base rates. The revenue requirements of Phase 1 are only \$1.05 million annually. This amount is not a material change. It clearly is the type of fluctuation that base rates are designed to accommodate between base rate proceedings. Even under the Company's inappropriate cost recovery request for the MUR (where \$6.45 million of the investment is recovered in one year – 2008) the total 2008-2009 MUR-related revenue requirement would be \$8.67 million. If the utility were to recover the \$8.67 million through base rates, the utility's return on equity would only change from 10.90% to 10.50% based on PEF's recent return reports. Allowing PEF to flow these costs through the clause would result in an unwarranted, "back door" base rate increase, because customers' bills would increase by the amount of the MUR-related costs, even though the MUR project would not justify a base rate increase. Thus, it is inappropriate for the MUR project to be recovered through the clause.

AARP: No. AARP adopts the position of the Office of Public counsel on this issue.

FIPUG: No. The Commission should resist shifting additional typical base rate through guaranteed cost recovery mechanisms.

No. This phase does no more than off set the CR coal plant capacity deratings.

WHITE SPRINGS: Agree with FIPUG.

FRF: No.

STAFF: No position at this time.

B. Phase 2 of PEF's CR3 Uprate Project?

POSITIONS

PEF: Yes, the CR3 Uprate costs (1) are not recognized or anticipated in the cost levels used to determine PEF's current base rates and (2) the costs generate fuel savings for customers. Thus the project satisfies the requirements of Order 14546, which creates an ability for utilities to incur costs to generate fuel savings. Recovery through the fuel clause for all the CR3 Uprate costs, consistent with PEF's position to Issue 3 below, should therefore be granted.

The costs associated with Phase 2 of the CR3 Uprate project should be recovered through the fuel clause, consistent with PEF's position to Issue 3 below. This phase satisfies Order 14546. Order 14546 does not contain an "earnings test" so it is irrelevant whether PEF could absorb these costs in base rates without affecting its rate of return.

OPC: No. Phase II of the CR3 uprate project involves replacement of the turbine line components to take advantage of greater steam efficiencies in the turbines and electrical generator. This phase is expected to be placed in service with the 2009 CR3 refueling outage and will add an estimated 28 MWe at a preliminary cost estimate of \$88 million. Again, the turbine line replacements are plant investment made by the utility which are normally and traditionally recovered through base rates. Phase 2 consists of investment in nuclear generating plant. The costs are not volatile and are not fuel-related in the sense that would qualify them for inclusion in the fuel cost recovery.

In addition, Order No. 14546, which PEF attempts to invoke, was intended to provide an incentive to expend monies in circumstances in which the utility had no ability to process a base rate proceeding in time to build the costs into base rates. PEF projects that it will place Phase 2 into service during 2009. This is important because the utility has the opportunity and capability of returning to the Commission for base rate relief, if and when, it determines that such base rate relief is necessary. Thus, the cost of Phase II can be captured appropriately through a base rate proceeding that could occur in the 2009 time frame without the utility incurring the potential loss of return in the interim. This fact obviates the need for an "incentive" in the form of a departure from fundamental ratemaking, and distinguishes PEF's situation from that addressed in Order No. 14546.

PEF's proposed means of recovery lopsidedly skews benefits to the utility and its shareholders, at the expense of customers. PEF would create severe intergenerational inequities among customers by recovering 100% of costs over at least ten years before future customers realize any benefits. Also, by artificially shortening recovery periods, PEF would require customers to forgo the net present value benefits of cost-free capital in the form of deferred taxes. Granting PEF's proposal would overcharge customers, because its proposed return on investment is overstated in light of the risk-free nature of the fuel cost recovery mechanism.

AARP: No. AARP adopts the position of the Office of Public Counsel on this issue.

FIPUG: No. The Commission should resist shifting additional typical base rate through guaranteed cost recovery mechanisms.

No. It only partially replaces the cancellation of Hines 5 & 6.

**WHITE
SPRINGS:** Agree with FIPUG.

FRF: No.

STAFF: No position at this time.

C. Phase 3 of PEF's CR3 Uprate Project, including:

1. Nuclear Core Modifications, Secondary Systems, and Other Project related Plant Additions/Modifications?

POSITIONS

PEF: Yes, the CR3 Uprate costs (1) are not recognized or anticipated in the cost levels used to determine PEF's current base rates and (2) the costs generate fuel savings for customers. Thus the project satisfies the requirements of Order 14546, which creates an ability for utilities to incur costs to generate fuel savings. Recovery through the fuel clause for all the CR3 Uprate costs, consistent with PEF's position to Issue 3 below, should therefore be granted.

The Nuclear Core Modifications, Secondary Systems, and Other Project-related Plant Additions/Modifications costs should be recovered through the fuel clause, consistent with PEF's position to Issue 3 below. These costs satisfy Order 14546. The

Commission did not limit the types of costs that could be recovered pursuant to Order 14546, as long as they were not recognized or anticipated in the utility's current base rates and generated fuel savings.

OPC: No. Phase III of the CR3 project will increase the power or thermal MWe produced in the reactor core by making plant modifications to allow for use of more highly enriched uranium. Phase 3 is expected to add 140 MWe to be placed into service by 2011 at an estimated cost of \$199 million. These components of Phase 3 consist of investments in nuclear generating plant. Like those of earlier phases, the costs are not volatile and are not fuel-related in the sense that would qualify them for clause recovery.

In addition, Order No. 14546, which PEF attempts to invoke, was intended to provide an incentive to expend monies in circumstances in which the utility had no ability to process a base rate proceeding in time to build the costs into base rates. That is not the case here. PEF can submit and process a base rate proceeding prior to the time it begins to incur the costs following the refueling outage of 2011. There is no occasion or need for an "incentive" in the form of a departure from the base rate process. This fact distinguishes PEF's situation from that addressed in Order No. 14546.

PEF's proposed means of recovery lopsidedly skews benefits to the utility and its shareholders, at the expense of customers. PEF would create severe intergenerational inequities among customers by recovering 100% of costs over at least ten years before future customers realize any benefits. Also, by artificially shortening recovery periods, PEF would require customers to forgo the net present value benefits of cost-free capital in the form of deferred taxes. Granting PEF's proposal would overcharge customers, because its proposed return on investment is overstated in light of the risk-free nature of the fuel cost recovery mechanism.

Further, there is no certainty as to the overall proposed savings of the CR3 project (PEF's basis for fuel clause recovery), because savings values estimated further out into the future are less reliable. The near term planning horizon (2007-2015) when projected values are probably more accurate, customers receive no net savings, rather they are assigned a net loss associated with the proposed uprate. Under the utility's proposal to recover the CR3 cost through the fuel clause, it is not until 2016 that the proposal provides a net savings in nominal dollars for customers. What is

certain from the utility's proposal is that the utility will recover its costs on an accelerated basis - as compared to traditional ratemaking - while customers will be forced to wait for savings than may not come at the proposed level.

AARP: No. AARP adopts the position of the Office of Public Counsel on this issue.

FIPUG: No. The Commission should resist shifting additional typical base rate through guaranteed cost recovery mechanisms.

See response to ISSUE 1-C-4 below.

WHITE SPRINGS: Agree with FIPUG.

FRF: No.

STAFF: No position at this time.

2. The "point of discharge" cooling solution?

POSITIONS

PEF: Yes, the CR3 Uprate costs (1) are not recognized or anticipated in the cost levels used to determine PEF's current base rates and (2) the costs generate fuel savings for customers. Thus the project satisfies the requirements of Order 14546, which creates an ability for utilities to incur costs to generate fuel savings. Recovery through the fuel clause for all the CR3 Uprate costs, consistent with PEF's position to Issue 3 below, should therefore be granted.

The "point of discharge" cooling solution costs should be recovered through the fuel clause, consistent with PEF's position to Issue 3 below. These costs satisfy Order 14546. The Commission did not limit the types of costs that could be recovered pursuant to Order 14546, as long as they were not recognized or anticipated in the utility's current base rates and generated fuel savings. In addition, the cooling solution changes must be made as a direct result of the increased MW output of CR3.

OPC: No. The point of discharge (POD) costs associated with the increased capacity of Phase III of the CR3 project is estimated at \$51 million. Essentially, according to the utility's analysis, the

140 MWe increase associated with Phase III will increase the temperature and the proposed POD facilities are necessary to reduce the incremental temperature increase to the temperature level prior to the uprate. The cost estimates are extremely preliminary and may change significantly, especially since the utility has yet to determine the most cost effective option to accomplish the goal of reducing the temperature. This component of Phase 3 consists of investment in nuclear generation plant. The costs are not volatile and are not fuel-related in the sense that would satisfy the criteria of the fuel cost recovery clause.

Order No. 14546, which PEF attempts to invoke, was intended to provide an incentive to the utilities to undertake measures for which the utility had no ability to process a base rate proceeding in time to build the costs into base rates. Here, PEF can submit and process a base rate proceeding prior to the time it begins to incur the costs following the refueling outage of 2011. Accordingly, there is no need for an incentive. This fact differentiates PEF's situation from that addressed in Order No. 14546.

PEF's proposed means of recovery severely skews benefits to the utility and its shareholders, to the detriment of customers. PEF would create severe intergenerational inequities among customers by recovering 100% of costs over at least ten years before future customers realize any benefits. Also, by artificially shortening recovery periods, PEF would require customers to forgo the net present value benefits of cost-free capital in the form of deferred taxes. Granting PEF's proposal would overcharge customers, because PEF's proposed return on investment is overstated in light of the risk-free nature of the fuel cost recovery mechanism.

AARP: No. AARP adopts the position of the Office of Public Counsel on this issue.

FIPUG: No. The Commission should resist shifting additional typical base rate through guaranteed cost recovery mechanisms.

See response to ISSUE 1-C-4 below.

WHITE SPRINGS: Agree with FIPUG.

FRF: No.

STAFF: No position at this time.

3. Transmission upgrades associated with the CR3 Uprate Project?

POSITIONS

PEF: Yes, the CR3 Uprate costs (1) are not recognized or anticipated in the cost levels used to determine PEF's current base rates and (2) the costs generate fuel savings for customers. Thus the project satisfies the requirements of Order 14546, which creates an ability for utilities to incur costs to generate fuel savings. Recovery through the fuel clause for all the CR3 Uprate costs, consistent with PEF's position to Issue 3 below, should therefore be granted.

The transmission upgrade costs should be recovered through the fuel clause, consistent with PEF's position to Issue 3 below. These costs satisfy Order 14546. The Commission did not limit the types of costs that could be recovered pursuant to Order 14546, as long as they were not recognized or anticipated in the utility's current base rates and generated fuel savings. In addition, the transmission upgrades must be made as a direct result of the increased MW output of CR3.

OPC: No. The transmission projects necessary to accommodate the increased capacity of CR3 are estimated at \$104 million. The transmission upgrades are necessitated by the fact that the uprate will cause CR3 to become the largest single generator in Florida. The utility must have the capability to respond to the loss of that single largest unit to maintain the stability of the grid. PEF hopes to have the transmission upgrades piggyback its rationale for including the generating plant in the clause, because there is even less justification for including investments in transmission facilities in the fuel cost recovery clause than there is for including investments in nuclear generating plant. Transmission facilities clearly are related to the capacity of the system, not to fuel.

Further, the costs are not volatile. They are not fuel-related within the meaning of the criteria of the fuel cost recovery clause.

Importantly, Order No. 14546, on which PEF attempts to rely, was intended to provide an incentive to spend money on measures in circumstances in which the utility had no ability to process a base rate proceeding in time to build the related costs into base rates. The order is inapplicable to the this case, because PEF can submit and process a base rate proceeding prior to the time it begins to incur the costs following the refueling outage of 2011. In short,

there is no need for an “incentive,” and no reason to depart from fundamental ratemaking.

In addition, PEF’s proposed means of recovery unfairly skews benefits to the utility and its shareholders, at the expense of customers. PEF would create severe intergenerational inequities among customers by recovering 100% of costs over at least ten years before future customers realize any benefits. By truncating recovery periods, PEF would require customers to forgo the benefits of cost-free capital in the form of deferred taxes. Granting PEF’s proposal would overcharge customers, because PEF’s proposed return on investment is overstated in light of the risk-free nature of the fuel cost recovery mechanism.

AARP: No. AARP adopts the position of the Office of Public Counsel on this issue.

FIPUG: No. The Commission should resist shifting additional typical base rate through guaranteed cost recovery mechanisms.

See response to question (4) below.

WHITE SPRINGS: Agree with FIPUG.

FRF: No.

STAFF: No position at this time.

4. Other costs associated with phase 3 of the CR3 Uprate Project?

POSITIONS

PEF: Yes, the CR3 Uprate costs (1) are not recognized or anticipated in the cost levels used to determine PEF’s current base rates and (2) the costs generate fuel savings for customers. Thus the project satisfies the requirements of Order 14546, which creates an ability for utilities to incur costs to generate fuel savings. Recovery through the fuel clause for all the CR3 Uprate costs, consistent with PEF’s position to Issue 3 below, should therefore be granted.

All other costs associated with phase 3 should be recovered through the fuel clause, consistent with PEF’s position to Issue 3 below. These costs satisfy Order 14546. The Commission did not limit the types of costs that could be recovered pursuant to Order

14546, as long as they were not recognized or anticipated in the utility's current base rates and generated fuel savings.

OPC: PEF has demonstrated no justification for including any portion of the costs of Phase 3 of the uprate project in the fuel cost recovery clause.

AARP: No. AARP adopts the position of the Office of Public Counsel on this issue.

FIPUG: No. The Commission should resist shifting additional typical base rate through guaranteed cost recovery mechanisms.

No all of these costs are typical base rate charges.

**WHITE
SPRINGS:** Agree with FIPUG.

FRF: No.

STAFF: No position at this time.

ISSUE 2: **If the Commission authorizes clause recovery of the CR3 Uprate Project, which cost recovery clause, fuel or capacity, is appropriate for capitalized costs attributable to the uprate?**

POSITIONS

PEF: The recovery of PEF's costs for the uprate should be through the same clause in which savings will materialize, so that no particular class of customer is harmed or benefited by the allocation. Allocation of fuel savings will be through the fuel clause, so the costs must be allocated the same way.

OPC: No position.

AARP: No position.

FIPUG: The capacity cost recovery clause, but this approach would still authorize cost recovery in violation of the 2005 settlement agreement, and permit potential double recovery for items already adequately compensated through base rates, as stated above.

**WHITE
SPRINGS:**

If clause recovery is authorized for any portion of the CR3 uprate project, those costs should be recovered through the capacity cost recovery clause.

FRF:

The Commission should not authorize clause recovery of the CR3 Uprate Project. If it does, the FRF takes no position on whether any allowed capital costs should be recovered through the Fuel Cost Recovery Clause or the Capacity Cost Recovery Clause.

STAFF:

No position at this time.

ISSUE 3: **If the Commission authorizes clause recovery of the CR3 Uprate Project, what capital recovery periods should the Commission prescribe for the assets?**

POSITIONS

PEF:

Consistent with past Commission precedent and policy, PEF should be authorized to recover through the fuel adjustment clause the amortization of capital costs and a return on capital at their current pretax weighted average cost of capital (WACC) of the project amortized over a period for which the demonstrated fuel savings exceed the amortization and pretax WACC return of the project.

OPC:

Whether PEF recovers the costs of the uprate through base rates or through the clause, the recovery periods should correspond to the useful lives of the assets—here, through the year 2036. This will fairly and equitably match the costs and benefits of the assets. To allow PEF to artificially shorten the recovery period would result in severe, unfair discrepancies between those customers who bear the costs of the project and those who later would receive fuel savings.

AARP:

AARP adopts the position of the Office of Public Counsel on this issue.

FIPUG:

Useful life of the rate base additions.

**WHITE
SPRINGS:**

Agree with FIPUG.

FRF:

Agree with Public Counsel.

STAFF:

No position at this time.

ISSUE 4: Based on the recovery periods prescribed for the CR3 Uprate Project assets, what ratemaking adjustments, if any, are necessary?

POSITIONS

PEF: No rate making adjustments are necessary. Consistent with Commission treatment in past petitions of this nature, PEF proposes fuel clause recovery of the amortization of capital investment and the return on that capital investment at the pretax weighted average cost of capital last authorized by the commission. As such these investment costs would not be included in the calculation of base rates during the period over which recovery is occurring through the fuel clause.

OPC: Whether PEF recovers the costs of the uprate through base rates or through the clause, the Commission should reset the recovery periods to correspond with the expected useful lives. If it allows PEF to use the artificially accelerated lives that the utility proposes, the Commission should make those ratemaking adjustments needed to compensate customers for the loss of the net present value benefits of deferred taxes that they would receive with the application of the standard useful life concept.

AARP: AARP adopts the position of the Office of Public Counsel on this issue.

FIPUG: No position at this time.

WHITE SPRINGS: Agree with OPC.

FRF: No adjustments to PEF's rates are appropriate at this time. As to any accounting adjustments that would impact ratemaking treatment at the appropriate time (i.e., after PEF's current rate case stipulation expires), the FRF will agree with Public Counsel.

STAFF: No position at this time.

ISSUE 5: If the Commission authorizes PEF clause recovery of the CR3 Uprate Project, what return on investment should the Commission authorize PEF to include?

POSITIONS

PEF: Consistent with the Commission's past decisions that have allowed recovery of capital costs through the fuel clause pursuant to Order 14546,

PEF proposes to recover a return on investment of its current pretax weighted average cost of capital.

OPC:

If the Commission denies PEF's proposal, as Citizens urge, this issue will become moot. PEF's proposal to earn 11.75% on its investment in assets flowing through the clause overstates its costs, because the proposed return contemplates the risk of non-recovery associated with base rate treatment, whereas the clause is virtually risk-free as a result of the true-up process. If the Commission were to grant PEF's request for clause treatment, it should authorize a return no greater than the cost of debt. (Citizens recognize that the existing settlement agreement addresses the return on capital items that the Commission permits PEF to flow through clause items during the term of the agreement.)

AARP:

AARP adopts the position of the Office of Public Counsel on this issue.

FIPUG:

No position at this time.

**WHITE
SPRINGS:**

Agree with FIPUG.

FRF:

The Commission should not authorize clause recovery of the CR3 Uprate Project. If the Commission denies PEF's proposal, as urged by the FRF, OPC, and other consumer intervenors, this issue will become moot. The FRF agrees with Public Counsel that PEF's proposal to earn 11.75% on its investment in assets flowing through the clause overstates its reasonable and prudent costs, because the proposed return contemplates the risk of non-recovery associated with base rate treatment, whereas the clause is virtually risk-free as a result of the true-up process. The FRF further agrees with OPC that, if the Commission were to grant PEF's request for clause treatment, it should authorize a return no greater than PEF's cost of debt.

STAFF:

No position at this time.

ISSUE 6: If the Commission authorizes clause recovery of the CR3 Uprate Project, how should the costs associated with the project be allocated between wholesale and retail jurisdictions for rate recovery purposes?

POSITIONS

PEF:

To the extent that the joint owners of CR3 agree to pay for a portion of the costs associated with the CR3 uprate, PEF will reduce its cost recovery request accordingly. Likewise, the net fuel savings benefits will be

allocated proportionately among the joint owners, depending on the percentage of costs each owner bears.

OPC: If the Commission denies PEF's proposal, as Citizens urge, this issue will become moot. Whether PEF recovers the costs of the uprate through base rates or the fuel cost recovery clause, retail customers should pay for only the portion of the unit that is devoted to retail service. At this point, Citizens have not addressed the specific methodology for accomplishing the appropriate allocation.

AARP: AARP adopts the position of the Office of Public Counsel on this issue.

FIPUG: In accordance with the projected wholesale sales shown in the filed ten year sight plans, approximately 12% to 15% to the wholesale market. In addition if there are any co owners of the CR # 3 these owners should make the appropriate contribution.

WHITE SPRINGS: Agree with OPC.

FRF: The Commission should not authorize clause recovery of the CR3 Uprate Project. If the Commission does so, it should allocate costs in accord with appropriate wholesale-retail jurisdictional separation factors for CR3. More specifically, the FRF agrees with OPC that whether PEF recovers the costs of the CR3 Uprate through base rates or a cost recovery clause, retail customers should pay for only the portion of the unit that is devoted to retail service.

STAFF: No position at this time.

ISSUE 7: **If the Commission authorizes clause recovery of the CR3 Uprate Project, what reports, if any, should PEF be required to file with the Commission?**

POSITIONS

PEF: Consistent with PEF's past practice associated with the Commission's approval of past requests, the Company will attach an exhibit to its testimony each year in the fuel clause, which will show the calculation of fuel savings and costs of the project.

OPC: If the Commission denies PEF's proposal, as Citizens urge, this issue will become moot. Alternatively, PEF must be required to file a report that clearly identifies the timing and level of all claimed costs incurred along with the corresponding timing and level of cost recovery. Further, PEF must demonstrate the prudence of its expenditures for all investments that

would normally have been given base rate treatment and would have been subject to standard prudence review in a base rate case.

AARP: AARP adopts the position of the Office of Public Counsel on this issue.

FIPUG: No Position at this time.

**WHITE
SPRINGS:** Agree with OPC.

FRF: If the Commission denies PEF's proposal, as advocated by the FRF, OPC, and other consumer intervenors, this issue will become moot. If the Commission authorizes clause recovery, then the Commission should require PEF to file reports at least annually that include complete information on the projected capital and fuel costs of the proposed CR3 Uprate Project.

STAFF: No position at this time.

ISSUE 8: Should this docket be closed?

POSITIONS

PEF: Yes, this docket should be closed.

OPC: The docket should be closed if the Commission denies PEF's petition, as Citizens urge the Commission to do. If the Commission authorizes PEF to collect any of the uprate-related costs through the clause, it should close the docket only if all related issues of updated estimates, prudence of actual expenditures, and implementation are preserved and can be raised in other dockets.

AARP: AARP adopts the position of the Office of Public Counsel on this issue.

FIPUG: Yes.

**WHITE
SPRINGS:** No position at this time.

FRF: Yes.

STAFF: No position at this time.

IX. EXHIBIT LIST

<u>Witness</u>	<u>Proffered By</u>	<u>I.D. No.</u>	<u>Description</u>
<u>Direct</u>			
Daniel L. Roderick	PEF	<u>DLR-1</u>	Aerial view of Crystal River Complex, including CR3.
Daniel L. Roderick	PEF	<u>DLR-2</u>	Photo of primary plant configuration for pressurized water reactor nuclear plant at CR3 that shows major components of nuclear reactor and primary coolant system.
Daniel L. Roderick	PEF	<u>DLR-3</u>	Schematic of major components in primary system and balance of nuclear plant that shows major components in secondary systems, including main turbine and main generator.
Samuel S. Waters	PEF	<u>SSW-1</u> (Amended)	Amended Summary of Annual Fuel Savings of Proposed Power Upgrade to CR3.
Samuel S. Waters	PEF	<u>SSW-2</u>	Summary of Overall Cost Effectiveness of the Proposed Power Upgrade to CR3 to the retail customer.
Javier Portuondo	PEF	<u>JP-1</u>	Excerpt of Schedule B-13 of Minimum Filing Requirement submitted in Docket No. 050078-EI.
Javier Portuondo	PEF	<u>JP-2</u>	Excerpt of Schedule B-2 of Minimum Filing Requirement submitted in Docket No. 050078-EI.
Javier Portuondo	PEF	<u>JP-3</u>	Excerpt of Schedule B-1 of Minimum Filing Requirement submitted in Docket No. 050078-EI.

<u>Witness</u>	<u>Proffered By</u>	<u>I.D. No.</u>	<u>Description</u>
Patricia W. Merchant	OPC	<u>PWM-1</u>	Resume
Daniel J. Lawton	OPC	<u>DJL-1</u>	Resume and Case Listing
Daniel J. Lawton	OPC	<u>DJL-2</u>	Deferred Tax Impact
Daniel J. Lawton	OPC	<u>DJL-3</u>	Net Savings at 7.5% ROR
Daniel J. Lawton	OPC	<u>DJL-4</u>	Cash Flow Comparison
Daniel J. Lawton	OPC	<u>DJL-5</u>	PEF's Proposed Timing
Jeffry Pollock	FIPUG	<u>JP-1</u>	PEF 2006 Surveillance Report
Jeffry Pollock	FIPUG	<u>JP-2</u>	USNRC Power Uprates
Jeffry Pollock	FIPUG	<u>JP-3</u>	Impact of Sales Growth
Jeffry Pollock	FIPUG	<u>JP-4</u>	CCCR vs. Fuel Clause
Included in Comprehensive Exhibit list, subject to objections on relevancy of evidence	FIPUG	<u></u>	Order 8160 Docket 770316 dated February 2, 1978 authorizing Florida Power Corporation to modify its base rates to reflect the true net savings resulting from the generation of electricity from its Crystal River Nuclear Unit
Included in Comprehensive Exhibit list, subject to objections on relevancy of evidence	FIPUG	<u></u>	Review of 2006 Ten Year Site Plans dated December 2006

<u>Witness</u>	<u>Proffered By</u>	<u>I.D. No.</u>	<u>Description</u>
Included in Comprehensive Exhibit list, subject to objections on relevancy of evidence	FIPUG	_____	Progress Energy Florida Ten Year Site Plans filed on or about April 1 in the years 2005, 2006 and 2007
Included in Comprehensive Exhibit list, subject to objections on relevancy of evidence	FIPUG	_____	Rule 25-22.071 Submission of Ten Year Site Plans
Included in Comprehensive Exhibit list, subject to objections on relevancy of evidence	FIPUG	_____	Rule 25-6.035 Adequacy of Resources
Included in Comprehensive Exhibit list, subject to objections on relevancy of evidence	FIPUG	_____	PSC Order PSC-06-972-FOF-EI dated November 22, 2006 relating to cost recovery for environmental costs
Included in Comprehensive Exhibit list, subject to objections on relevancy of evidence	FIPUG	_____	PSC Order PSC-06-994-FOF-EG dated November 30, 2006 relating to cost recovery for conservation costs
Included in Comprehensive Exhibit list, subject to objections on relevancy of evidence	FIPUG	_____	PSC Order PSC-06-1057-FOF-EG dated December 22, 2006 relating to cost recovery for fuel, hedging, security, capacity, generating incentives and miscellaneous other cost recovery items

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

X. PROPOSED STIPULATIONS

The parties stipulated that the items included in FIPUG's Motion for Official Recognition will be included in the Comprehensive Exhibit List to be entered into the record. Parties reserve the right to object to the relevancy of each document.

XI. PENDING MOTIONS

There are no pending motions.

XII. PENDING CONFIDENTIALITY MATTERS

PEF's First Request for Confidential Classification, filed June 7, 2007
PEF's Second Request for Confidential Classification, filed June 20, 2007.

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 100 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 100 words, it must be reduced to no more than 100 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 40 pages and shall be filed at the same time.

XIV. RULINGS

A. There was a dispute regarding the wording of the first sentence of Issue 1. The parties and staff presented two options for consideration. The two options presented were as follows:

Option 1: Should the Commission authorize clause recovery in lieu of base rate recovery of the prudent and reasonable costs of the following:

Option 2: Should the Commission authorize clause recovery of the prudent and reasonable costs of the following:

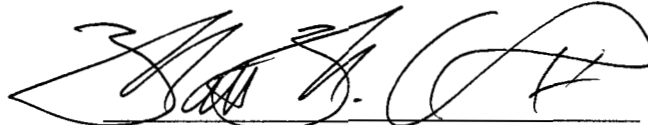
Having considered the arguments of the parties, Option 2 is the wording that shall be used for the first sentence of Issue 1.

B. Opening statements, if any, shall not exceed fifteen minutes per side.

It is therefore,

ORDERED by Commissioner Matthew M. Carter II, 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 Matthew M. Carter II, as Prehearing Officer, this 31st day of July, 2007.



MATTHEW M. CARTER II
Commissioner and Prehearing Officer

(S E A L)

LCB

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 25-22.060, 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.