

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Review of coal costs for Progress Energy Florida's Crystal River Units 4 and 5 for 2006 and 2007.	DOCKET NO. 070703-EI ORDER NO. PSC-09-0210-PHO-EI ISSUED: April 7, 2009
--	---

Pursuant to Notice and in accordance with Rule 28-106.209, Florida Administrative Code (F.A.C.), a Prehearing Conference was held on March 24, 2009, in Tallahassee, Florida, before Chairman Matthew W. Carter II, as Prehearing Officer.

APPEARANCES:

JOHN T. BURNETT, ESQUIRE, R. ALEXANDER GLENN, ESQUIRE,
Progress Energy Service Company, LLC, 100 Central Avenue, St. Petersburg,
Florida 33701-3323 and J. MICHAEL WALLS, ESQUIRE, and DIANE M.
TRIPPLETT, ESQUIRE
On behalf of Progress Energy Florida, Inc. (PEF).

JOSEPH A. MCGLOTHLIN, ESQUIRE, Office of Public Counsel, c/o The
Florida Legislature, 111 West Madison Street, Room 812, Tallahassee, Florida
32399-1400
On behalf of Citizens of the State of Florida (OPC).

CECILIA BRADLEY, ESQUIRE, Office of the Attorney General, The Capitol –
PL01, Tallahassee, Florida 32399-1050
On behalf of the Citizens of Florida (OAG).

JOHN W. MCWHIRTER, ESQUIRE, McWhirter Law Firm, Post Office Box
3350, Tampa, Florida 33601, and VICKI GORDON KAUFMAN, ESQUIRE,
Keefe, Anchors, Gordon and Moyle, 118 North Gadsden Street, Tallahassee,
Florida 32301
On behalf of Florida Industrial Power Users Group (FIPUG).

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).

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

DOCUMENT NUMBER-DATE

03058 APR-7 8

FPSC-COMMISSION CLERK

PREHEARING ORDER

I. CASE BACKGROUND

By Order No. PSC-07-0816-FOF-EI, issued October 10, 2007, in Docket No. 060658-EI, we considered a petition by the Office of Public Counsel, asserting that Progress Energy Florida, Inc. (PEF) was imprudent in its coal procurement for Crystal River Units 4 and 5 for the years 1996-2005. We did not consider evidence for any years subsequent to 2005. The issue of the prudence of PEF for its coal procurement activities for Crystal River Units 4 and 5 for the years 2006 and 2007 was raised as an issue in the 2007 fuel docket, Docket No. 070001-EI. By stipulation of the parties, it was agreed to consider this issue in a separate docket. Accordingly, this docket was opened and has been set for hearing on April 13-15, 2009.

II. CONDUCT OF PROCEEDINGS

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

III. JURISDICTION

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

IV. PROCEDURE FOR HANDLING CONFIDENTIAL INFORMATION

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

It is the policy of this Commission that all Commission hearings be open to the public at all times. The Commission also recognizes its obligation pursuant to Section 366.093, F.S., to protect proprietary confidential business information from disclosure outside the proceeding. Therefore, any party wishing to use any proprietary confidential business information, as that term is defined in Section 366.093, F.S., 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 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 no more than seven 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 prefiled exhibits may be moved into the record. All other exhibits may be similarly identified and entered into the record at the appropriate time during the hearing.

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

The parties shall avoid duplicative or repetitious cross-examination. Further, friendly cross-examination will not be allowed. Cross-examination shall be limited to witnesses whose testimony is adverse to the party desiring to cross-examine. Any party conducting what appears

to be a friendly cross-examination of a witness should be prepared to indicate why that witness's direct testimony is adverse to its interests.

VI. ORDER OF WITNESSES

Each witness whose name is preceded by a plus sign (+) will present direct and rebuttal testimony together.

<u>Witness</u>	<u>Proffered By</u>	<u>Issue #</u>
<u>Direct</u>		
Sasha Weintraub	PEF	1, 2, 3
James N. Heller	PEF	1, 2, 3
David J. Putman	OPC	1, 2, 3
<u>Rebuttal</u>		
Sasha Weintraub	PEF	1, 2, 3
James N. Heller	PEF	1, 2, 3
Jennifer Stenger	PEF	1

VII. BASIC POSITIONS

PEF: In Docket 060658, the Commission heard testimony on issues related to coal purchases for Crystal River Units 4 and 5 (“CR4 and CR5”) between 1996 and 2005. Subsequently, this docket was opened to consider PEF’s coal procurement activities for CR4 and CR5 for the years 2006 and 2007, consistent with the Commission’s final order in that docket.

In this docket, PEF filed the direct testimony of witnesses James N. Heller and Sasha Weintraub to support the prudence of the PEF’s coal procurement activities for CR4 and CR5 for the years 2006 and 2007. As ordered by the Commission, PEF applied the Commission’s methodology in its direct testimony and compared the delivered coal costs PEF actually incurred by using Central Appalachian and imported coal at CR4 and CR5 during 2006 and 2007 with the evaluated coal costs that would have been incurred if a 20% blend of Powder River Basin (“PRB”) coal had been used at CR4 and CR5 during the same time period. In its testimony, PEF uses real coal purchases that actually happened, with real costs, real pricing, and real information that is based on actual experience in the market

that can be objectively verified by cold, hard facts. These comparisons are consistent with and follow the “Cost Effectiveness Test” performed by Staff in their Primary Recommendation in Docket 060658, as used in Order 07-0816-FOF-EI, pages 37-39 and Attachment A. As detailed in PEF’s direct testimony, PEF’s coal procurement decisions for 2006 and 2007 saved PEF’s customers millions of dollars in fuel costs in those years.

On the other hand, OPC appears to start with a desired result, a determination of excess fuel costs, and then backs into that result with fictional purchases, incorrect or outdated costs, speculative and incomplete information, and other “cherry picked” data inputs that will support the apparent predetermined result that it desires. In fact, OPC uses two entirely new types of coal, (Spring Creek and Indonesian coal), that the Commission did not hear evidence on and did not consider in Docket 060658. As PEF’s rebuttal testimony shows, PEF could not have been in a position to reasonably and prudently burn these new coals in 2006 and 2007 as OPC suggests, and even if PEF could have been, those coals would not have provided PEF’s customers the savings that OPC alleges.

As PEF’s testimony shows, PEF’s coal procurement decisions for 2006 and 2007 saved PEF’s customers millions of dollars in fuel costs in those years. In 2006 and 2007, PEF purchased, and continues to purchase, the most economical coal available under market conditions for CR4 and CR5. That is what PEF has done and that is what PEF will continue to do.

OAG:

In Order No. PSC-07-0816-FOF-EI, the Commission determined that Progress Energy Florida (PEF) was imprudent when it failed to obtain a permit authorizing it to burn the sub-bituminous coal that Crystal River Units 4 and 5 were designed to burn prior to 2003. It found that PEF can burn a blend containing at least 20% sub-bituminous coal without reducing the units’ output. Based on a comparison of the cost of more economical sub-bituminous coal that producers offered during PEF’s procurements (as those bids were evaluated by PEF) with the highest costing 20% of coal that was actually delivered to Crystal River Units 4 and 5 during 2003, 2004, and 2005, the Commission ordered PEF to refund \$13.8 million to its customers.

2005 was the most recent year for which data was available when the Commission reviewed this matter in Docket No. 060658-EI. PEF did not obtain a permit authorizing it to burn sub-bituminous coal at Crystal River 4 and 5 until May of 2007, well after it had entered contractual arrangements for coal to be delivered to the units in 2006 and 2007. The Commission should therefore apply to actual costs of 2006 and 2007 the same test it applied to the years 2003, 2004, and 2005 to determine whether the imprudences identified in Order No. PSC-07-0816-FOF-EI continued to cause coal costs to be unreasonably high at Crystal River 4 and 5 in those years.

PEF has demonstrated the same imprudence for 2006 and 2007 as was identified in Order No. PSC-07-0816-FOF-EI. Although PEF's customers suffered the added expense of construction of a plant that would burn the sub-bituminous coal, PEF failed to use the less expensive coal that their customers had paid to use. Further, the sub-bituminous coal contains a lower sulfur content and customers were denied the opportunity to take advantage of lower costs for environmental compliance. Applying the standards which the PSC applied in Order No. PSC-07-0816-FOF-EI, to the instant case, PEF's CR4 and CR5 coal costs and related costs of emissions allowances were unreasonably high in 2006 and 2007 by a total of \$61 million, excluding interest.

At this time, PEF has failed to conduct test burns using higher blends of sub-bituminous coal. Even though PEF applied for a permit authorizing 50% sub-bituminous coal, and even though a higher limit in the permit could potentially lower customers' fuel cost in the future, PEF has failed to conduct the tests which DEP would need to authorize the higher level burns. The PSC should order PEF to test blends containing higher percentages of sub-bituminous coal in Crystal River 4 and 5. The tests should be overseen by an independent engineering firm, and the test results should be reported to the PSC. If the results of the test burns demonstrate a higher level of sub-bituminous coal is appropriate, PEF should seek an amendment to its permit.

OPC:

In Order No. PSC-07-0816-FOF-EI, the Commission determined that Progress Energy Florida (PEF) was imprudent when it failed to obtain a permit authorizing it to burn the sub-bituminous coal that Crystal River Units 4 and 5 were designed to burn prior to 2003. It found that PEF can burn a blend containing at least 20% (by weight) sub-bituminous coal without reducing the units' output. Based on a comparison of the evaluated cost of more economical sub-bituminous coal that producers offered during PEF's procurements (as those bids were evaluated by PEF) with the highest costing 20% (by weight) of coal that was actually delivered to Crystal River Units 4 and 5 during 2003, 2004, and 2005, the Commission ordered PEF to refund \$13.8 million to its customers.

2005 was the most recent year for which data was available when the Commission reviewed this matter in Docket No. 060658-EI. PEF did not obtain a permit authorizing it to burn sub-bituminous coal at Crystal River 4 and 5 until May of 2007, well after it had entered contractual arrangements for coal to be delivered to the units in 2006 and 2007. The Commission should therefore apply to actual costs of 2006 and 2007 the same test it applied to the years 2003, 2004, and 2005 to determine whether the imprudences identified in Order No. PSC-07-0816-FOF-EI continued to cause coal costs to be unreasonably high at Crystal River 4 and 5 in those years.

In his testimony, OPC witness David J. Putman demonstrates that, as a result of the same imprudences identified in Order No. PSC-07-0816-FOF-EI, when

arranging for deliveries in 2006 and 2007 PEF again was not positioned to take advantage of the opportunity to purchase more economical sub-bituminous coal. In his analysis, Mr. Putman adheres strictly to the methodology of Order No. PSC-07-0816-FOF-EI. He bases his comparison on bids that PEF received and evaluated at the time PEF made the relevant procurement decisions. Applying the parameters of Order No. PSC-07-0816-FOF-EI, he shows that PEF had the opportunity to purchase more than 1 million tons of coal costing over \$40 per ton less than PEF paid for deliveries in 2006 and 2007. Further, this alternative coal contained far less sulfur than the coal that was actually delivered, meaning that the impact of PEF's imprudence on customers was compounded by the inability to take advantage of an opportunity to lower the costs of environmental compliance that are passed on to customers. Altogether, PEF's CR4 and CR5 coal costs and related costs of emissions allowances were unreasonably high in 2006 and 2007 by a total of \$61 million, excluding interest.

As the Commission prepares to conduct an evidentiary hearing in April 2009, PEF still has not performed all that prudence requires with respect to utilizing fully the flexibility of Crystal River Units 4 and 5 for which customers have been paying. In 2006 PEF applied for a permit authorizing it to burn a 50/50 mixture of sub-bituminous and bituminous coals. When it issued a permit in 2007, the Florida Department of Environmental Protection limited PEF to 20% sub-bituminous coal. The FDEP imposed this limitation because PEF performed the test burn on which it relied to support its application with only an 18% blend. At the time it issued the permit, the FDEP invited PEF to support a permit amendment by performing additional tests with blends containing higher percentages of sub-bituminous coal. Even though PEF applied for a permit authorizing 50% sub-bituminous coal, and even though a higher limit in the permit could potentially lower customers' fuel cost in the future, to this date PEF has made no effort to pursue the opportunity that the FDEP extended. The Commission should order PEF to test blends containing higher percentages of sub-bituminous coal in Crystal River 4 and 5. The tests should be overseen by an independent engineering firm, and the test results should be reported to the Commission. If the results warrant, PEF should seek an amendment to its permit.

FIPUG: FIPUG supports the positions of the Office of Public Counsel in this docket.

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: Did the imprudences in PEF's fuel procurement activities determined in Order PSC-07-0816-FOF-EI result in the costs of coal actually delivered to Crystal River Units 4 and 5 during 2006 and 2007 being unreasonably high?

POSITIONS

PEF: No. To the contrary, PEF's coal procurement activities saved PEF's customers millions of dollars in fuel costs during 2006 and 2007.

OAG: Yes. Applying the same standards in Order No. PSC-07-0816-FOF-EI to the facts of this case for 2006 and 2007 establishes that the costs borne by customers were unreasonably high in the amount of \$61,279,193.

OPC: Yes. The application of the findings and cost comparison methodology contained in Order No. PSC-07-0816-FOF-EI to the facts bearing on 2006 and 2007 establishes that the costs borne by customers were unreasonably high in the amount of \$61,279,193.

FIPUG: Yes.

STAFF: Staff takes no position at this time.

ISSUE 1A: How should the reasonableness of the costs of coal delivered to Crystal River Units 4 and 5 during 2006 and 2007 be measured?

POSITIONS

PEF: Pursuant to the "Cost Effectiveness Test" performed by Staff in their Primary Recommendation in Docket 060658, as used in Order 07-0816-FOF-EI, pages 37-39 and Attachment A, and as reflected in PEF's testimony in this docket.

OAG: The PSC should apply the same standards it used in Order No. PSC-07-0816-FOF-EI.

OPC: The reasonableness should be measured by the "yardstick" of Order No. PSC-07-0816-FOF-EI. The Commission issued this order in Docket No. 060658-EI, which encompassed years through 2005. In the order, the Commission determined that PEF was imprudent when it failed to have a permit to burn sub-bituminous coal in CR4 and CR5 prior to 2003. It concluded that the costs of fueling CR4 and CR5 were made unreasonably high in 2003, 2004, and 2005 as a consequence of PEF's inability to legally burn the more economical sub-bituminous coal that was offered to PEF. PEF did not obtain such a permit until May 2007, well after it procured coal for delivery in 2006 and 2007; those years

therefore are part of a continuum with the time frame of Docket No. 060658. Accordingly, the Commission should apply to 2006 and 2007 the same metrics that it used in Order No. PSC-07-0816-FOF-EI.

In that regard, the Commission determined that CR4 and CR5 can burn a blend containing 20% (by weight) sub-bituminous coal without a reduction in output. It concluded that the coals should be blended off-site. As a practical matter, this means the blending would occur at a transloading facility for waterborne coal. The Commission compared the costs of the 20% highest costing tons actually delivered by water in 2003, 2004, and 2005 with the evaluated costs of an equivalent number of tons of alternatives offered during relevant RFPs. In calculating a refund, the Commission recognized that, had PEF been able to purchase the alternative (low sulfur) sub-bituminous coal, PEF would have spent less for SO₂ emissions allowances. The Commission did not reduce the amount of overcharges to be refunded by the cost of coal handling upgrades that the plant would have required, for the reason that such costs would have been considered in base rate proceedings. PEF's contention that results for 2006-2007 should be adjusted for capital costs is misplaced. Those same handling upgrades would have been in place in 2006-2007. PEF would continue to recover the capital costs through base rates. Savings from additional purchases of sub-bituminous coal would simply serve to increase the benefit-to-cost ratio beyond what was already more than sufficient to justify the capital additions in Docket No. 060658-EI.

FIPUG: Use the evaluation guidelines established by PSC Order No. 07-0816-FOF-EI. To compare PEF's delivered coal costs to the costs it would have incurred if it had purchased the lowest cost coal available during the period.

STAFF: Staff takes no position at this time.

ISSUE 1B: What candidates for alternative coal purchases should the Commission consider in evaluating whether more economical coal was available for delivery to Crystal River Units 4 and 5 during 2006?

POSITIONS

PEF: None, other than the Wyoming PRB coal that the Commission heard evidence on and considered in Docket 060658. The "Cost Effectiveness Test" performed by Staff in their Primary Recommendation in Docket 060658, as used in Order 07-0816-FOF-EI, pages 37-39 and Attachment A, and as reflected in PEF's testimony in this docket, calls for a comparison of PEF's actual coal purchases in 2006 to purchases of the Wyoming PRB coal that the Commission heard evidence on and considered in Docket 060658. The Commission has not heard evidence on and did not consider the drastically different Spring Creek coal that OPC advances in its testimony in the proceeding, and the Commission should reject

OPC's testimony based on OPC's failure to comply with the legal requirements set forth in Order 07-0816-FOF-EI. Additionally, PEF's rebuttal testimony demonstrates that contrary to OPC's assertions, PEF could not have even reasonably and prudently burned Spring Creek coal in the 2006 time frame as OPC contends, and the Commission should further reject OPC's testimony on this factual basis.

OAG: The alternative coal that should be compared with the costs of coal actually delivered in 2006 is the lowest cost coal that was available at the time of related procurement decisions. The lowest bids were for sub-bituminous coal from the Powder River Basin offered by Kennecott during the Request For Proposals that PEF conducted in April, 2004. The fact that the RFP was conducted in a year prior to the year of the deliveries that are the subject of the inquiry is no basis on which to exclude the bids from consideration. In fact, PEF did procure a portion of its 2006 requirements based on the results of the 2004 RFP.

OPC: The alternative coal that should be compared with the costs of coal actually delivered in 2006 is the lowest cost coal that was available at the time of related procurement decisions. The lowest bids were for sub-bituminous coal from the Powder River Basin offered by Kennecott during the Request For Proposals that PEF conducted in April, 2004. The fact that the RFP was conducted in a year prior to the year of the deliveries that are the subject of the inquiry is no basis on which to exclude the bids from consideration. In fact, PEF did procure a portion of its 2006 requirements based on the results of the 2004 RFP. Also, in this docket PEF witness Heller uses a bid to PEF's 2006 RFP to compare with actual 2007 costs.

The alternative that PEF witness Heller used in his analysis of 2006 costs is wholly inappropriate for the purpose. It was not the most economical alternative offered and available to PEF; it was a tiny quantity (3,300 tons), purchased specifically for a test burn, and therefore a poor proxy for the alternative to the large volumes of coal actually purchased for ongoing operations; it was a spot, not a contract, purchase; and the small quantity of Peabody test burn coal was not even representative of the properties typical of PRB sub-bituminous coal.

FIPUG: Agree with OPC.

STAFF: Staff takes no position at this time.

ISSUE 1C: By what amount, if any, were the costs of coal actually delivered to Crystal River Units 4 and 5 unreasonably high in 2006?

POSITIONS

PEF: None. To the contrary, PEF's coal procurement activities saved PEF's customers millions of dollars in fuel costs during 2006 and 2007.

OAG: The 2006 coal costs at CR4 and CR5 were unreasonably high by the amount of \$25,149,162, excluding interest. To this amount must be added \$2,915,308, to account for the fact that the sub-bituminous coal which was not purchased contained far less sulfur and would have resulted in lower costs of emissions allowances.

OPC: Comparing the evaluated costs of the 2004 Kennecott bids with the 20% highest costing tons actually delivered in 2006, the 2006 coal costs at CR4 and CR5 were unreasonably high by the amount of \$25,149,162, excluding interest. To this amount must be added \$2,915,308, to account for the fact that the alternative coal not purchased contained far less sulfur and would have resulted in lower costs of emissions allowances.

FIPUG: \$25,149,462

STAFF: Staff takes no position at this time.

ISSUE 1D: What candidates for alternative coal purchases should the Commission consider in evaluating whether more economical coal was available for delivery to Crystal River Units 4 and 5 during 2007?

POSITIONS

PEF: None, other than the Wyoming PRB coal that the Commission heard evidence on and considered in Docket 060658. The "Cost Effectiveness Test" performed by Staff in their Primary Recommendation in Docket 060658, as used in Order 07-0816-FOF-EI, pages 37-39 and Attachment A, and as reflected in PEF's testimony in this docket, calls for a comparison of PEF's actual coal purchases in 2007 to purchases of the Wyoming PRB coal that the Commission heard evidence on and considered in Docket 060658. The commission has not heard evidence on and did not consider the drastically different Indonesian coal that OPC advances in its testimony in this proceeding, and the Commission should reject OPC's testimony based on OPC's failure to comply with the legal requirements set forth in Order 07-0816-FOF-EI. Additionally, PEF's rebuttal testimony demonstrates that contrary to OPC's assertions, PEF could not have even reasonably and prudently burned Indonesian coal in the 2007 time frame as OPC contends, and the Commission should further reject OPC's testimony on this factual basis.

OAG: The PSC should consider the bids of two Indonesian producers of sub-bituminous coal. PEF, evaluated these bids from the Indonesian producers which showed that they were far more economical than the cost of the coal actually delivered. Indonesia is one of the leading producers of coal for international markets. The coals had extremely low ash and extremely low sulfur content, both of which are valuable properties.

OPC: Against the highest costing 20% of coal actually delivered in 2007, the Commission should compare the evaluated costs of the bids of two Indonesian producers of sub-bituminous coal. As evaluated by PEF, the bids from the Indonesian producers were far more economical than the cost of the coal actually delivered. Indonesia is one of the leading producers of coal for international markets. The coals had extremely low ash and extremely low sulfur content, both of which are valuable properties.

The coal offered by Indonesian producers was far more economical than the bid from Louis Dreyfus to supply PRB coal that PEF received in the same RFP and that PEF's witness chose to compare with actual costs to measure reasonableness. With respect to gauging whether PEF paid too much as a consequence of not having a permit to burn sub-bituminous coal in place, neither Order No. PSC-07-0816-FOF-EI nor anything the Commission has said regarding the scope of Docket No. 070703-EI limits the source of alternative sub-bituminous coal to the Powder River Basin. PEF could not purchase the Indonesian sub-bituminous coal for precisely the same reasons it could not purchase the PRB coal in Docket no. 060658-EI. Those reasons formed a basis for a refund in Docket no. 060658-EI, and do so again in this proceeding.

FIPUG: Agree with OPC.

STAFF: Staff takes no position at this time.

ISSUE 1E: By what amount, if any, were the costs of coal actually delivered to Crystal River Units 4 and 5 unreasonably high in 2007?

POSITIONS

PEF: None. To the contrary, PEF's coal procurement activities saved PEF's customers millions of dollars in fuel costs during 2006 and 2007.

OAG: The 2007 coal costs at CR4 and CR5 were unreasonably high by the amount of \$25,866,364, excluding interest. In addition, the sub-bituminous coal contained far less sulfur than the coal actually delivered in 2007, and would have enabled PEF to save customers \$7,348,059 in the form of lower costs of emissions allowances.

OPC: Comparing the evaluated costs of the 2006 Indonesian bids with the 20% highest costing tons actually delivered in 2007, the 2007 coal costs at CR4 and CR5 were unreasonably high by the amount of \$25,866,364, excluding interest. In addition, the Indonesian coal contained far less sulfur than the coal actually delivered in 2007, and would have enabled PEF to save customers \$7,348,059 in the form of lower costs of emissions allowances.

FIPUG: \$25,866,364

STAFF: Staff takes no position at this time.

ISSUE 2: If the Commission determines that the costs of coal delivered to Crystal River Units 4 and 5 during 2006 and 2007 were unreasonably high, should it require PEF to issue a refund to its customers? If so, in what amount?

POSITIONS

PEF: No. Based on the evidence that the Commission will hear in this matter, such a determination would not be based on competent, credible evidence and would constitute reversible error.

OAG: Yes. In this case, the PSC should order Progress Energy to refund to customers the amount of \$61,279,193 plus interest.

OPC: Yes. One of the Commission's most important functions is to insulate customers from having to bear costs that have been made unreasonably high as a consequence of utility imprudence. In this instance, the Commission should order Progress Energy to refund to customers the amount of \$61,279,193 plus interest.

FIPUG: Yes it should order a \$61,279,193 refund to include the cost of emission allowances required to offset higher sulfur coal plus interest on the sum to be refunded using the average commercial paper rate for the years 2006 and 2007 for ease of calculation.

STAFF: Staff takes no position at this time.

ISSUE 3: Based on the evidence of PEF's fuel procurement approach and activities as they relate to Crystal River 4 and 5, what additional action, if any, should the Commission take in this docket?

POSITIONS

PEF: The Commission should close this docket.

OAG: The PSC should direct PEF to conduct a test burn of blends designed to ascertain the highest percentage of sub-bituminous coal that can be used in a blend while maintaining 105% overpressure and satisfying all environmental requirements. The tests should be overseen by a qualified, independent engineering firm. The report should be furnished to the Commission by a date certain. If the results of a properly conducted test support the use of a blend containing more than 20% sub-bituminous coal, PEF should apply to the FDEP to have its permit amended accordingly.

OPC: PEF did not “test burn” sub-bituminous coal in CR4 and CR5 until May 2006. Subsequently, when it applied to the Florida Department of Environmental Protection for the permit authorizing it to burn the coal at CR4 and CR5, it requested permission to burn as much as a 50/50 blend-which is also the design basis fuel that PEF prescribed for its units at the time they were designed and built. The FDEP permit limits PEF to 20% sub-bituminous coal because 20% approximates the only blend that PEF tested. However, the FDEP also invited PEF to perform tests of blends containing higher percentages of sub-bituminous coal to support a permit authorizing greater use of sub-bituminous coal. From the time the FDEP issued the permit in May 2007, PEF has made no effort to pursue the matter further, and it appears PEF has no intention of doing so. OPC believes PEF’s failure to follow through on this matter compounds its past imprudence. To prevent PEF from wasting a valuable asset for which its customers have been paying since the mid-1980s, the Commission should direct PEF to conduct a test burn of blends designed to ascertain the highest percentage of sub-bituminous coal that can be used in a blend while maintaining 105% overpressure and satisfying all environmental requirements. The tests should be overseen by a qualified, independent engineering firm. The report should be furnished to the Commission by a date certain. If the results of a properly conducted test support the use of a blend containing more than 20% sub-bituminous coal, PEF should apply to the FDEP to have its permit amended accordingly.

To be clear, with this recommendation OPC is not attempting to reopen or relitigate the appropriate level of refund that the Commission ordered in Order No. PSC-07-0816-FOF-EI; nor does OPC seek to advocate the use of a blend containing more than 20% sub-bituminous coal as the Commission calculates the appropriate amount of refund in this docket. Rather, OPC submits that on a forward looking basis, and in the clear absence of any PEF initiative for doing so, the Commission should require PEF to take all actions necessary to ensure that it can in the future utilize all of the flexibility for which customers are paying.

FIPUG: Customers have been adversely impacted in three ways by PEF’s imprudence. They have been required to pay higher fuel costs from 2002 through the present day, higher carrying costs on two power plants, CR 4 & 5 since the plants became commercially operable in December 1982 and October 1984 respectively. In

addition to the coal cost overcharges and carrying cost overcharges customers have tolerated over the years; customers have paid an annual depreciation charge to enable PEF to recover a major portion, if not all of its investment in the excess and unused portion of the generating plant upgrades to enable the utility to burn Powder River basin coal. PEF continues to collect a return on its investment in CR 1, 2, 4 & 5 plus an annual depreciation charge.

To avoid a multiplicity of annual actions to calculate and litigate fuel cost refunds justified as a result of PEF imprudence FIPUG recommends that PEF be required to continue to operate CR 1, 2, 4 & 5 at its cost and at no expense to consumers for a return on investment, depreciation charge or cost of capital improvement until the proposed Levy County Nuclear plant becomes operational.

STAFF: Staff takes no position at this time.

IX. EXHIBIT LIST

<u>Witness</u>	<u>Proffered By</u>	<u>ID No.</u>	<u>Description</u>
<u>Direct</u>			
Sasha Weintraub	PEF	SAW-1	Coal Procurement Procedures
Sasha Weintraub	PEF	SAW-2	February 3, 2006 RFP for coals for Crystal River Units 4 and 5
Sasha Weintraub	PEF	SAW-3	Bidder list of suppliers who responded to February 3, 2006 RFP
Sasha Weintraub	PEF	SAW-4	PEF's coal procurement plan for February 3, 2006 RFP
James N. Heller	PEF	JNH-1	Educational and professional background
James N. Heller	PEF	JNH-2	Summary of PRB delivered and evaluated prices using the methodology in the Commission's October 10, 2007 order

<u>Witness</u>	<u>Proffered By</u>	<u>ID No.</u>	<u>Description</u>
James N. Heller	PEF	JNH-3	Economic analysis of the impact of substituting a 20% blend of PRB coal for the coal actually delivered to CR4 and CR5 during 2006 and 2007, using the methodology in the Commission's October 10, 2007 order
James N. Heller	PEF	JNH-4	Summary of PRB delivered and evaluated prices including PEF's proposed corrections
James N. Heller	PEF	JNH-5	Economic Analysis of the impact of substituting a 20% blend of PRB coal for the coal actually delivered to CR4 and CR5 during 2006 and 2007 including PEF's proposed corrections
James N. Heller	PEF	JNH-6	Commission's original and PEF's adjusted capital recovery requirements associated with using a 20% blend of PRB coal at CR4 and CR5 during 2005
James N. Heller	PEF	JNH-7	PEF's adjusted capital recovery requirements associated with using a 20% blend of PRF coal at CR4 and CR 5 during 2006 and 2007
David J. Putman	OPC	DJP-1	Resume
David J. Putman	OPC	DJP-2	FERC 423 Data Sheets
David J. Putman	OPC	DJP-3	Tons received by water 2006 and 2007
David J. Putman	OPC	DJP-4	2004 RFP Document
David J. Putman	OPC	DJP-5	PEF Report to management: 2005-2006 Purchase Activity

<u>Witness</u>	<u>Proffered By</u>	<u>ID No.</u>	<u>Description</u>
David J. Putman	OPC	DJP-6	2004 RFP Evaluation sheet
David J. Putman	OPC	DJP-7	Calculation of excess fuel costs
David J. Putman	OPC	DJP-8	2006 RFP Evaluation sheet
David J. Putman	OPC	DJP-9	Excerpt of Weintraub testimony in Docket No. 060658-EI
David J. Putman	OPC	DJP-10	Indonesian sub-bituminous mine data
David J. Putman	OPC	DJP-11	Excess costs of emission allowances 2006-2007
David J. Putman	OPC	DJP-12	Allowance price forecast
David J. Putman	OPC	DJP-13	Calculation of total overcharges 2006-2007
David J. Putman	OPC	DJP-14	Excerpt, PEF application for test burn
David J. Putman	OPC	DJP-15	Excerpt, PEF application to FDEP re: 50% sub-bituminous blend
David J. Putman	OPC	DJP-16	Excerpt, FDEP technical evaluation

Rebuttal

Sasha Weintraub	PEF	SAW-5	Composite exhibit of workpapers supporting rebuttal testimony
James N. Heller	PEF	JNH-8	Correction of Mr. Putman's Btu Displacement Errors
James N. Heller	PEF	JNH-9	Correction of Mr. Putman's Failure to Include Capital Costs

<u>Witness</u>	<u>Proffered By</u>	<u>ID No.</u>	<u>Description</u>
James N. Heller	PEF	JNH-10	Calculation of Rail Delivery Constraints for 2006 Shipments
James N. Heller	PEF	JNH-11	Calculation of Vessel Delivery Constraints for 2007 Shipments of Indonesian Coal
Jennifer Stenger	PEF	JS-1	Spring Creek coals specification sheets and information
Jennifer Stenger	PEF	JS-2	PT Adaro Indonesian coal specification sheets and information
Jennifer Stenger	PEF	JS-3	PT Kideco Indonesian coal specification sheets and information
Jennifer Stenger	PEF	JS-4	Peabody Coaltrade Wyoming 8800 Btu PRB coal specification sheets and information
Jennifer Stenger	PEF	JS-5	Peabody Coaltrade Wyoming 8585 Btu PRB coal specification sheets and information
Jennifer Stenger	PEF	JS-6	Referenced pages of FPSC Order No. PSC-07-0816-FOF-EI in Docket 060658-EI
Jennifer Stenger	PEF	JS-7	We Energies coal explosion material
Jennifer Stenger	PEF	JS-8	Capital costs of certain equipment if Spring Creek coal or Indonesian coal were burned
Jennifer Stenger	PEF	JS-9	Coal quality comparisons
Jennifer Stenger	PEF	JS-10	ASTM Coal Ranking Table

<u>Witness</u>	<u>Proffered By</u>	<u>ID No.</u>	<u>Description</u>
Jennifer Stenger	PEF	JS-11	Evaluation Timeline for Spring Creek Coal
Jennifer Stenger	PEF	JS-12	Evaluation Timeline for Indonesian Coal
Jennifer Stenger	PEF	JS-13	Electrostatic Precipitator (ESP) Diagram
Jennifer Stenger	PEF	JS-14	B&W Unit Diagram

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

X. PROPOSED STIPULATIONS

There are no proposed stipulations at this time.

XI. PENDING MOTIONS

There are no pending motions at this time.

XII. PENDING CONFIDENTIALITY MATTERS

<u>Date Filed</u>	<u>Request</u>
2/7/08	Request for Confidential Classification [Regarding OPC's First Request for Production of Documents]
2/15/08	Request for Confidential Classification [Regarding OPC's Second Request for Production of Documents]
2/15/08	Notice of Intent [Regarding OPC's Second Set of Interrogatories]
3/7/08/	Request for Confidential Classification [Regarding OPC's Second Set of Interrogatories]
10/31/08	Request for Confidential Classification [Regarding testimony of PEF witness, Sasha Weintraub]
12/8/08	Request for Confidential Classification [Regarding OPC's Third Request for Production of Documents]
12/15/08	Request for Confidential Classification [Regarding OPC's Fourth Request for Production of Documents]

<u>Date Filed</u>	<u>Request</u>
2/13/09	Request for Confidential Classification [Regarding testimony of OPC witness, David J. Putman]

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

Opening statements, if any, shall not exceed seven minutes.

On March 23, 2008, Bill McCollum, Attorney General, State of Florida, petitioned to intervene in this proceeding. The Attorney General states that as chief legal officer of the state of Florida, he is authorized to intervene in all actions affecting the citizens of Florida. The Attorney General presents cases in support of his position that he is authorized to intervene in actions affecting the state, including state ex rel. Landis v. S.H. Kress & Co., 155 So. 823 (Fla. 1934) which in part affirms: "As the chief law officer of the State, it is his duty, in the absence of express legislative restrictions to the contrary, to exercise all such power and authority as public interest may require from time to time." 155 So. at 827, The Attorney General alleges that PEF has overcharged its customers by failing to use the most economical fuel and that such unnecessary charges are of concern to the public and require intervention by the Attorney General.

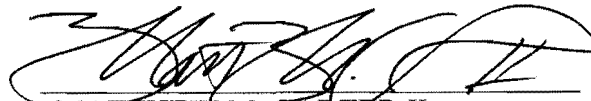
Having reviewed the Petition, it appears that the Attorney General, as chief legal officer of the state of Florida may intervene on behalf of the state of Florida, whose substantial interests may be affected by this proceeding. All parties to this proceeding were present at the Prehearing Conference and all parties stated that there were no objections to the Attorney General's petition to intervene. Therefore, the Petition is granted. Pursuant to Rule 25-22.039, F.A.C., the Attorney General takes the case as he finds it.

ORDER NO. PSC-09-0210-PH0-EI
DOCKET NO. 070703-EI
PAGE 21

It is therefore,

ORDERED by Chairman 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 Chairman Matthew M. Carter II, as Prehearing Officer, this 7th day of April, 2009.



MATTHEW M. CARTER II
Chairman and Prehearing Officer

(SEAL)

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 25-22.0376, Florida Administrative Code. Judicial review of a preliminary, procedural or intermediate ruling or order is available if review of the final action will not provide an adequate remedy. Such review may be requested from the appropriate court, as described above, pursuant to Rule 9.100, Florida Rules of Appellate Procedure.