

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

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In re: Nuclear Power Plant Cost Recovery Clause

Docket No. 110009-EI COMMISSION Submitted for Filing: September 8, 2011

REDACTED
PROGRESS ENERGY FLORIDA, INC.'S POST-HEARING STATEMENT OF ISSUES AND POSITIONS AND ARGUMENTS IN SUPPORT OF ITS PETITION TO RECOVER COSTS OF THE LEVY NUCLEAR PROJECT AND CRYSTAL RIVER UNIT 3 UPRATE PROJECT AS PROVIDED IN SECTION 366.93, FLORIDA STATUTES, AND RULE 25-6.0423, F.A.C.

Pursuant to Section 366.93, Florida Statutes, and Rule 25-6.0423, Florida Administrative Code, Progress Energy Florida, Inc. ("PEF" or the "Company"), petitioned the Florida Public Service Commission ("FPSC" or the "Commission"), to recover its costs for the Levy Nuclear Project ("LNP") and the Crystal River Unit 3 ("CR3") Extended Power Uprate ("EPU") Project ("CR3 Uprate") through the Nuclear Cost Recovery Clause ("NCRC"). The Commission held a hearing to consider PEF's cost recovery request on August 16-17, 2011. PEF submits that the record in this case conclusively demonstrates that the requirements of Section 366.93 and Rule 25-6.0423 have been met, that there is no credible dispute as to the respective prudence and reasonableness of PEF's costs, and that the Commission should therefore grant PEF's request.

In accordance with Prehearing Order No. PSC-11-0335-PHO-EI, issued August 9, 2011, PEF submits its Post-Hearing Statement of Issues and Positions and Arguments in Support of its Petition to Recover Costs of the LNP and the CR3 Uprate project.

I. PEF'S BASIC POSITION

A. Procedural Background of Proceedings.

In this 2011 NCRC docket the Commission was charged with deciding: (1) whether PEF's LNP 2010 costs were prudent; (2) whether PEF's LNP actual/estimated costs for 2011 and projected costs for 2012 are reasonable; (3) whether PEF's CR3 Uprate costs for 2009 and 2010

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were prudent; (4) whether PEF's CR3 Uprate actual/estimated costs for 2011 and projected costs for 2012 are reasonable; (5) whether PEF's CR3 Uprate 2010 project management, contracting, accounting and cost oversight controls were reasonable and prudent; (6) whether PEF's LNP 2010 project management, contracting, accounting and cost oversight controls were reasonable and prudent; (7) the long-term feasibility of completing the LNP; and (8) the long-term feasibility of completing the CR3 Uprate.

In support of its Petition, the Company submitted pre-filed direct testimony and exhibits on March 1, 2011 and May 2, 2011, pre-filed rebuttal testimony and exhibits on July 25, 2011, and detailed Nuclear Filing Requirement ("NFR") schedules with direct testimony for each category of costs, by year, for both the CR3 Uprate and the LNP. PEF's cost recovery request was further subject to two extensive audits by Commission Staff and discovery by Staff and multiple intervenors.<sup>1</sup>

Thereafter, on July 1, 2011<sup>2</sup>, PEF filed its Motion for Deferral of the Approval of the Long-term Feasibility and the Reasonableness of Projected Construction Expenditures and Associated Carrying Costs for the Crystal River Unit 3 Uprate Project and Petition for Temporary Variance or Waiver of Rules 25-6.0423(5)(c)2, 5, F.A.C. on an Emergency Basis (the "Motion"). This Motion requested deferral of consideration of the long-term feasibility and the reasonableness of projected 2011 and 2012 construction expenditures for the CR3 Uprate project to the 2012 NCRC proceeding in order to have time to include updated information in light of the March 14, 2011 delamination event at CR3. This Motion was granted on August 10, 2011 by

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<sup>1</sup> The Office of Public Counsel ("OPC"), Florida Industrial Power Users Group ("FIPUG"), White Springs Agricultural Chemicals d/b/a PCS Phosphate White Springs ("PCS"), Southern Alliance for Clean Energy ("SACE") and Federal Executive Agencies ("FEA") intervened in this Docket No. 110009-EI.

<sup>2</sup> On July 5, 2011, PEF filed a Notice of Filing Corrected Motion for Deferral to Correct Typographical Errors in Rule Citations with an attached Corrected Motion.

the full Commission and subsequently Hearing Issues 29, 34 and 35 were deferred to the 2012 NCRC proceeding. Based on this Motion being granted, PEF also filed revised testimony and NFR schedules dated August 12, 2011 of Thomas G. Foster reflecting the impacts of the deferral.

In addition, on or about August 15, 2011, the parties entered into a stipulation regarding the remaining issues associated with the CR3 Uprate – Issues 31, 32 and 33. This stipulation was reviewed and approved by the full Commission on August 16, 2011. As a result, the Issues tried at the 2011 NCRC hearing on August 16-17, 2011 only related to the LNP.

**B. Introduction and Summary of Proceedings.**

As discussed in more detail below, and as the Commission heard during PEF's opening statement, there remains four issues for the Commission to decide under the governing statute and rules. First, the prudence of the 2010 LNP actual costs; second, the prudence of the LNP 2010 project management, contracting, accounting and cost oversight controls; third, the reasonableness of the 2011 and 2012 LNP estimated and projected costs; and fourth, the reasonableness of the long-term feasibility analysis for the LNP. As PEF told this Commission during opening statements the evidence on each of these issues is undisputed. The testimony and exhibits presented at hearing on these issues demonstrates that PEF's 2010 LNP costs and its project management, contracting, accounting, and cost oversight controls are prudent, that PEF's actual/estimated 2011 and projected 2012 LNP costs are reasonable, and that PEF's analysis of the long-term feasibility of the LNP is reasonable.

As PEF also told this Commission during its opening statement, what the intervenors presented to the Commission during the hearing were distractions from this evidence and the real issues in the case. The Commission heard OPC talk about the LNP as a project in a "tailspin" and other intervenors refer to it as a "train wreck" and "treacherous path," and they questioned the Company's "judgment" and asked the Commission to "hold the line," but there was no

introduction of real evidence to support any of their sound-bites and colorful arguments. (T. 1365, 1372, 1378, 1381, 1383). For example, one intervenor referenced Hearing Exhibit No. 213, which is PEF witness Mr. John Elnitsky's handwritten notes, and the intervenor apparently argues that Mr. Elnitsky wrote the words "project in tailspin" on this piece of paper as if that were what he believes. (T. 2191). However, that argument, like so much of the intervenors' case and arguments, was a distraction from the real issues and evidence. Mr. Elnitsky testified he jotted those words down during OPC's opening statement as a reminder to refer to this mischaracterization of the project if later asked about it. (T. 2192). He testified that the LNP was absolutely not a project in tailspin. (T. 2192). Mr. Elnitsky's testimony under oath in front of the Commission is evidence. The intervenors' speculative questions or arguments about the witness notes are not.

A further example of the intervenor distractions attempted during the hearing occurred when OPC ignored the uncontradicted testimony and exhibits presented by Mr. Elnitsky that demonstrated the senior management-approved plan for the LNP and, instead, insinuated without any evidentiary support whatsoever, that there was a contrary "shadow-plan" or "hip-pocket plan" by the Company's senior management. OPC continued this baseless insinuation in OPC's questions suggesting the Company kept Mr. Elnitsky -- the *Vice President* of New Generation Programs and Projects, including the LNP -- out of the loop so they could secretly plan to change the LNP plan without his knowledge, giving him "deniability" in front of the Commission. (T. 1771-1772, 1830-1841). *NO* evidence was proffered or introduced by OPC to support these offensive statements. As Mr. Elnitsky made abundantly clear to this Commission, that is "not the way we would do business." (T. 1841). These offensive questions insinuating a nefarious plot that was wholly unsupported by any evidence -- and directly contrary to the actual evidence -- have no place in this evidentiary proceeding before this Commission.

Simply put, OPC and the intervenors had no evidence to support their attempts to characterize strategic planning scenarios conducted in 2010 by the Company as something more than the “what if” strategic scenarios they were so they resorted to these insulting and baseless questions as a substitute for evidence. (T. 1771-1772). The Commission should not be fooled by these distractions and instead should focus on the actual testimony of the one person at the hearings that attended the strategic planning scenario analysis presentations in 2010. Mr. Elnitsky explained that these were “what if” scenarios. (T. 1830-1832). They were not the LNP plan approved by the Company’s Senior Management Committee (“SMC”). Mr. Elnitsky explained the Company’s SMC-approved plan for the LNP, and that plan – the Company’s Integrated Project Plan (“IPP”), dated March 29, 2011 (Hearing Exhibit No. 189) – was presented to the Commission. (T. 2055, 2060, 2195-2197). Unlike the unsigned 2010 PowerPoint scenario analysis documents, the LNP March 2011 IPP conclusively shows that, *months after* the scenario analysis presentations, the SMC signed off on approving continued LNP spend in 2011 and 2012 toward completion of the LNP with the estimated in-service dates of 2021 and 2022 for the Levy nuclear power plants. (T. 2028-2029, 2060, 2195-2197).

Intervenors also raised the subject of intergenerational equity to challenge PEF’s request for advanced recovery of its prudently incurred costs on the LNP. (T. 2113-2114). This is yet another challenge to the nuclear cost recovery statute itself and, thus, a distraction for the Commission in this proceeding. When it enacted Section 366.93, the Florida Legislature certainly was aware of the concept of intergenerational equity. The Florida Legislature weighed the concern that some customers must pay now for long-term assets that only yield benefits for future customers against the long term fuel diversity and fuel savings, emissions, and other benefits of nuclear power generation projects, and the Florida Legislature decided to enact Section 366.93 to encourage the development of nuclear power plants by providing for advance

recovery of certain costs. *See* § 366.93, *Fla. Stat.*; (T. 2114- 2115). The Commission cannot revisit this determination. The Florida Legislature has spoken on the issue of intergenerational equity with respect to the development of nuclear power plants in Florida in Section 366.93, which the intervenors have continued to ignore and attempted to re-litigate in 2009, 2010 and yet again in 2011.

Lastly, the Commission should analyze the intervenor briefs and see if the arguments in those briefs conform to the evidence of record. OPC witness, Dr. William Jacobs, in testimony, stated he reviewed PEF's LNP costs and feasibility analysis and he did not challenge the feasibility analysis for the LNP or the prudence or reasonableness of any LNP costs.<sup>3</sup> He testified only to the timing of when PEF should recover non-Combined Operating License ("COL") costs; he did not dispute that these costs were reasonable in amount and necessary for the LNP. (T. 1994-1995, 2000-2001, 2005-2006, 2010-2011, 2023-2026, 2027). Dr. Jacobs also agreed in sworn deposition testimony that he was not testifying that PEF did not have the intent to build the LNP. (T. 2029-2030). That is the intervenor witness evidence in this proceeding.

Remarkably, during the hearing, however, Dr. Jacobs sought to change this testimony. (T. 2018-2019, 2021-2022 ("In reviewing my deposition transcript it occurred to me that my answer during the deposition was probably not correct...");<sup>4</sup> T. 2029-2030). Apparently, if the intervenors don't like their own prior testimony given under sworn oath, they just change it. Likewise, they steadfastly intervened to stop PEF witnesses from explaining answers to their questions. (T. 1580, 1593-1595, 1601, 1778-1779, 1812, 1922, 2098, 2149). In other words,

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<sup>3</sup> Dr. Jacobs did testify that the LNP was less feasible than it was last year, but he agreed that less feasible is still feasible. (T. 2026-2027).

<sup>4</sup> This was even after Dr. Jacobs was provided the opportunity to review his deposition transcript, and attested that he did so in his errata sheet filed on August 15, 2011, but did not provide any of this explanation in the sworn errata sheet at that time. (T. 2022).

these are further distractions because the intervenors do not want the Commission to read or hear the evidence, but the evidence is there in the record, and that evidence supports PEF's position that its actual LNP costs are prudent, its actual/estimated and projected LNP costs are reasonable, and its feasibility analysis for the LNP is reasonable.

All of these distractions reveal a simple fact – there is no real, substantive challenge to PEF's evidence on any of the issues that the Commission must decide. The evidence of record – which is the live and pre-filed testimony, exhibits, and hearing exhibits – was not contradicted by contrary testimony, contrary evidence, or impeachment of witness testimony. Argument of counsel unsupported by any evidence of record is not evidence. Therefore, for all of these reasons, and as stated in more detail below, the evidence of record conclusively demonstrates that PEF's actual 2010 LNP were prudent and that all of PEF's 2011 and 2012 costs for the LNP are reasonable. The evidence further conclusively demonstrates the long-term feasibility of completing the LNP. The Commission should approve PEF's request for cost recovery for its LNP and CR3 Uprate project costs through the Capacity Cost Recovery Clause ("CCRC") factor.

## **II. PEF'S POST-HEARING STATEMENT OF ISSUES AND POSITIONS AND ARGUMENTS IN SUPPORT OF SPECIFIC POSITIONS.**

### **1. LEGAL/POLICY ISSUES.**

#### **ISSUE A:**

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

#### **PEF Position:**

\* This issue was rendered moot by the Commission granting PEF's Motion for Deferral on August 10, 2011. \*

## 2. FACT ISSUES.

Issues 1 through 19 are Florida Power & Light (FPL) specific issues and as such PEF takes no position on these issues and does not address these issues in its Post-Hearing Brief.

### LEVY NUCLEAR PROJECT:

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

#### PEF Position:

\* Yes, the Commission should approve what PEF has submitted as its annual detailed analysis of the long-term feasibility of completing the LNP. With the testimony and exhibits of John Elnitsky, PEF submitted a detailed analysis consistent with the requirements of Rule 25-6.0423 and the analysis this Commission originally approved in Docket No. 090009-EI. If the Commission does not approve PEF's submission based on perceived technical deficiencies, it should identify the deficiencies and permit PEF to re-file with additional information. If the Commission finds the LNP is not feasible on substantive grounds, this would preclude PEF from completing the LNP and the Commission should award PEF its prudent 2010, reasonable 2011, and reasonable project exit costs pursuant to Section 366.93(6). \*

#### The Record Evidence Demonstrates that the LNP Continues to be Feasible.

PEF submitted a detailed analysis setting forth the updated long-term feasibility of completing the LNP, consistent with the Commission's rule, Orders, and prior PEF feasibility analyses that have been approved by the Commission. (T. 1681 & Exh. No. 161). The analysis demonstrates that the LNP is feasible from both a regulatory and technical perspective (T. 1681-1682, 1699-1703) and that the LNP continues to be economically feasible at this time. (T. 1682).

First, the Company employed a qualitative analysis of the technical and regulatory capability of completing the plants, the risks, and the costs and benefits of completing the Levy nuclear power plants. The qualitative feasibility analysis of the enterprise risk facing the LNP reveals some changes in the enterprise risk since last year but no dramatic increase or decrease in the uncertainty associated with the risk facing the project and no fundamental changes in these



risks that indicate a need to either accelerate or cancel the LNP at this time. (T. 1682, 1703-1726). As part of this analysis, the Company demonstrated that the LNP is feasible from a regulatory and technical perspective.

The second step was an updated Cumulative Present Value System Revenue Requirements (“CPVRR”) economic analysis. The updated CPVRR indicates that the LNP is economically viable and has the potential to provide PEF and its customers with fuel and environmental cost savings over the life of the project. (T. 1698). The CPVRR, exhibit JE-4 to Mr. Elnitsky’s May 2, 2011 (Hearing Exhibit No. 161) is included in the chart below:

**PEF Summary CPVRR Review for 2011 NCRC Filing**

<b>Economic Results Summary Table (NCRC'11 Study)</b>										
<b>Fuel Sensitivities</b>				<b>CapEx Sensitivities</b>						
<i>Base Capital Reference Case</i>	<i>Low Fuel Reference</i>	<i>Mid Fuel Reference</i>	<i>High Fuel Reference</i>	<i>Mid Fuel Reference Case</i>	<i>LNP CapEx (15%)</i>	<i>LNP CapEx (5%)</i>	<i>Mid Fuel Reference</i>	<i>LNP CapEx +5%</i>	<i>LNP CapEx +15%</i>	<i>LNP CapEx +25%</i>
<b>NCRC MAR'11: 100% Ownership, 2021 COD Levy Case Versus All Gas CPVRR \$Million, 6.75% Discount Rate</b>										
No CO <sub>2</sub>	(\$12,366)	(\$3,714)	\$8,269	No CO <sub>2</sub>	(\$2,042)	(\$3,182)	(\$3,714)	(\$4,322)	(\$5,461)	(\$6,601)
EPA WM CO <sub>2</sub>	(\$8,172)	\$936	\$12,549	EPA WM CO <sub>2</sub>	\$2,534	\$1,394	\$936	\$254	(\$886)	(\$2,026)
CRA WM CO <sub>2</sub>	(\$5,579)	\$3,715	\$15,306	CRA WM CO <sub>2</sub>	\$5,380	\$4,240	\$3,715	\$3,100	\$1,960	\$821
EPRI Full CO <sub>2</sub>	(\$2,962)	\$6,446	\$18,219	EPRI Full CO <sub>2</sub>	\$8,125	\$6,985	\$6,446	\$5,846	\$4,706	\$3,566
EPRI Ltd CO <sub>2</sub>	\$2,527	\$12,062	\$24,401	EPRI Ltd CO <sub>2</sub>	\$13,748	\$12,608	\$12,062	\$11,468	\$10,328	\$9,188
<b>NCRC MAR'11: 80% Ownership, 2021 COD Levy Case Versus All Gas CPVRR \$Million, 6.75% Discount Rate</b>										
No CO <sub>2</sub>	(\$10,039)	(\$3,100)	\$6,567	No CO <sub>2</sub>	(\$1,762)	(\$2,654)	(\$3,100)	(\$3,547)	(\$4,439)	(\$5,331)
EPA WM CO <sub>2</sub>	(\$6,755)	\$399	\$9,897	EPA WM CO <sub>2</sub>	\$1,737	\$845	\$399	(\$47)	(\$939)	(\$1,831)
CRA WM CO <sub>2</sub>	(\$4,715)	\$2,567	\$11,994	CRA WM CO <sub>2</sub>	\$3,906	\$3,013	\$2,567	\$2,121	\$1,229	\$337
EPRI Full CO <sub>2</sub>	(\$2,651)	\$4,700	\$14,208	EPRI Full CO <sub>2</sub>	\$6,038	\$5,146	\$4,700	\$4,254	\$3,362	\$2,470
EPRI Ltd CO <sub>2</sub>	\$1,663	\$9,099	\$18,929	EPRI Ltd CO <sub>2</sub>	\$10,437	\$9,545	\$9,099	\$8,653	\$7,761	\$6,869
<b>NCRC MAR'11: 50% Ownership, 2021 COD Levy Case Versus All Gas CPVRR \$Million, 6.75% Discount Rate</b>										
No CO <sub>2</sub>	(\$7,056)	(\$2,592)	\$3,624	No CO <sub>2</sub>	(\$1,746)	(\$2,310)	(\$2,592)	(\$2,874)	(\$3,438)	(\$4,002)
EPA WM	(\$4,947)	(\$366)	\$5,687	EPA WM CO <sub>2</sub>	\$480	(\$84)	(\$366)	(\$648)	(\$1,212)	(\$1,776)
CRA WM	(\$3,640)	\$1,053	\$7,030	CRA WM CO <sub>2</sub>	\$1,899	\$1,335	\$1,053	\$771	\$207	(\$358)
EPRI Full	(\$2,343)	\$2,425	\$8,412	EPRI Full CO <sub>2</sub>	\$3,272	\$2,707	\$2,425	\$2,143	\$1,579	\$1,015
EPRI Ltd	\$420	\$5,262	\$11,499	EPRI Ltd CO <sub>2</sub>	\$6,108	\$5,544	\$5,262	\$4,980	\$4,415	\$3,851

This economic analysis demonstrates that the LNP is more cost effective than the all natural gas generation resource plan in the mid-fuel forecast at all ownership levels, provided that future carbon costs are included, except in the lowest carbon cost scenarios at the 50% ownership level. (T. 1727). Overall, the CPVRR analysis shows with regards to Fuel

Sensitivities at a 6.75% discount rate, 10 of 15 cases are positive at a 100% ownership level; 10 of 15 cases are positive at an 80% ownership level; and 9 of 15 cases are positive at a 50% ownership level. For the Capital Expenditure Sensitivities, 22 of 30 cases are positive at a 100% ownership level; 21 of 30 are positive at an 80% ownership level; and 18 of 30 are positive at a 50% ownership level. The CPVRR demonstrates that the LNP is economically feasible and has the potential to provide customers with billions of dollars of savings over the life of the project. (T.1726-1730 & Exh. No. 161). Essentially, the updated feasibility analysis confirms the Company's decision last year to proceed with the LNP on a slower pace. (T. 1682).

OPC witness Dr. Jacobs agreed that the LNP is still feasible. (T. 2027). Dr. Jacobs simply points out that the LNP is somewhat less feasible than it was last year, but still feasible. (T. 2026-2027). Moreover, Dr. Jacobs agreed that PEF should not cancel the project, or the EPC Agreement, and that "they're [PEF] on the right course at this point in time and should not cancel the project." (T. 2030).

The other intervenors presented no witnesses contesting the feasibility of the LNP in the 2011 NCRC proceeding. SACE instead pointed to the low fuel costs scenarios in the CPVRR analysis in its questions as representative of the project and states the LNP is not economically feasible when the CPVRR analysis is analyzed from a low-fuel reference case. (T. 1953-1954). However, the Commission recognized in its 2010 NCRC Order, Commission Order No. PSC-11-0095-FOF-EI, that the low-fuel case cannot be looked at in a vacuum, stating "[n]atural gas prices have historically been volatile and subject to sharp increases in price," *id.* at 24, and "the low fuel reference scenario should be discounted because it assumes natural gas prices to remain less than \$5.00/MMBtu over the next 30 years." *Id.* In addition, the Commission recognized last year that, though not the present day scenario, carbon regulation is still expected and costs of carbon legislation improve the overall cost-effectiveness of the LNP. *Id.* The same is true this

year, the low-fuel case cannot be considered in a vacuum or as a representation of the 60-year plus operating life of the Levy units, especially based on a snap-shot CPVRR analysis at a single point in time.

For this reason, PEF continues to view the CPVRR as one factor among many factors that must be considered in making a decision about moving forward with the project. (T. 1730). Dr. Jacobs and the other intervenors are placing too much emphasis on year-to-year changes in annual CPVRR analyses performed for the LNP. (T. 2076). In fact, this emphasis is contrary to the opinion Dr. Jacobs expressed in the 2009 NCRC docket (*see* Hearing Exhibit No. 193), where he agreed that, even if changes in the fuel, emissions, or other forecasts demonstrated that the nuclear power plant was not cost effective, the Commission should not determine that the project should not go forward. (T. 2076 & Exh. No. 193). He agreed that no utility would evaluate a long-term, base load nuclear power plant based on year-to-year changes in such forecasts because, if the utility did use the annual forecasts to evaluate a long-term base load project, the utility would never build the nuclear power plant. (T. 2076 & Exh. No. 193). The Commission also agreed that the feasibility of a long-term project like the LNP cannot be made on instant circumstances reflected in the annual CPVRR analyses. *See* Order No. PSC-09-0783-FOF-EI, p. 32, in Docket No. 090009-EI; (T. 2077). The annual CPVRR economic analysis should be used to track and evaluate trends, according to the Commission, not to make the ultimate feasibility decision apart from a consideration of all other relevant factors. *Id.* That is exactly how the Company uses the CPVRR economic analysis. The Company will continue to track and evaluate trends with the CPVRR analysis but it will make its decisions about the LNP based on both its qualitative and quantitative feasibility analysis and the consideration of all other relevant factors to that decision. (T. 2077-2078).

There was no other evidence presented on feasibility. The Company's qualitative and quantitative feasibility analyses demonstrate that completion of the LNP is still feasible. There have been no fundamental changes in the project or the LNP enterprise or project risks at this time that require the Company to reconsider its decision. (T. 1735). Based on the undisputed evidence of record PEF has demonstrated that the LNP is feasible.

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

**PEF Position:**

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

**PEF's Undisputed Evidence Establishes the Total Estimated Cost for the LNP.**

The undisputed evidence presented by PEF witnesses Mr. Elnitsky and Mr. Foster demonstrates that the total estimated cost for the LNP including AFUDC and sunk costs is approximately \$22.5 billion. (T. 1617, 2107). This amount was clearly and transparently stated by PEF witnesses. (T. 1617, 2107). No intervenor or Staff witness presented any evidence or even cross-examination questions contesting the creation of this estimate, the amount of this estimate, or the reasonableness of this estimate. Therefore, as a factual matter this issue should be established based on the undisputed testimony of PEF witnesses.

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

**PEF Position:**

\* The Levy Units 1 & 2 nuclear plants are estimated for commercial operation in 2021 for Unit 1 and eighteen months later in 2022 for Unit 2. \*

**PEF's Undisputed Evidence Establishes the Estimated Planned Commercial Operation Dates of the LNP are 2021 and 2022.**

The undisputed evidence presented by PEF witness Mr. Elnitsky demonstrates that the estimated planned commercial operation dates for the LNP are 2021 and 2022. (T. 1768-1770). In addition, the LNP IPP approved by the SMC on March 29, 2011, (Hearing Exhibit No. 189), shows that PEF's project plan is to bring the Levy nuclear units online in 2021 and 2022, respectively. In addition, Hearing Exhibit No. 212 is a more detailed project schedule for the LNP showing that the units will be brought on-line in 2021 and 2022. No intervenor or Staff witness presented any testimony, exhibits, or cross-exhibits contesting this evidence of the LNP in-service dates.

Intervenors did speculate about different LNP in-service dates based on Progress Energy, Inc.'s Securities Exchange Commission ("SEC") filings that included the current established Levy units in-service dates and, later, did not; and strategic planning scenario analysis PowerPoint presentations that included later in-service dates for the LNP in scenarios that do not reflect the expected plan for the LNP represented by the LNP plan of record in the subsequently executed LNP IPP. This is speculation, not evidence. The evidence demonstrates conclusively the SMC-approved IPP for the in-service dates for Levy Units 1 and 2 in 2021 and 2022.

PEF conducted strategic planning sessions in the summer of 2010 that included PowerPoint presentations comparing different in-service dates for the LNP and other Progress Energy, Inc. generation facilities based on various hypothetical scenarios utilized to challenge management's thinking on emerging issues, in particular, the impact of potential, future environmental regulations. (T. 1774-1775, 1789, 1819-1820, 2069-2070). Mr. Elnitsky – notably the only person at the hearing that was actually present when these presentations were made – testified extensively regarding these scenario analysis presentations. (T. 1774-1844,

2069-2074). Mr. Elnitsky's testimony regarding the purpose of these scenario analysis PowerPoint documents is authoritative and undisputed. All the intervenors offered were unfounded inferences and speculation about these scenario analyses that Mr. Elnitsky rejected as inaccurate. (*See, e.g.*, T. 1791-1792, 1808-1810, 1818). Mr. Elnitsky repeatedly testified that the current estimated commercial operation dates for the LNP are 2021 and 2022. (T. 1681, 1683, 1697-1698, 1734, 1738, 1743-1744, 1747-1748, 1764, 1768-1771, 1797, 1836).

Similarly, intervenors speculated about the reasons the current estimated commercial operation dates for the LNP were included in some but not all Progress Energy SEC filings. Mr. Elnitsky testified that the wording of the SEC filings is consistent with PEF's plan of record for the in-service dates for the Levy Units in 2021 and 2022 and that PEF's plan of record has not changed even though those dates are not specifically stated in more recent SEC filings. (T. 1764-1767; 2101-2104). Speculation by the intervenors as to why the specific in-service dates were not included in the more recent SEC filings does not change the uncontradicted evidence presented by the Company that the current estimated in-service dates for Levy Units 1 and 2 are 2021 and 2022. Therefore, as a factual matter, this issue should be established based on the undisputed testimony of PEF witnesses.

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

**PEF Position:**

\* Yes. The LNP is an active project under an existing NRC licensing application and EPC agreement. Section 366.93 provides that all costs associated with siting, design, licensing, and construction of a nuclear power plant are recoverable. It states that "costs" which are recoverable include but are not limited to, "all capital investments, including rate of return, any applicable taxes, and all expenses, including operation and maintenance expenses, related to or resulting from the siting, licensing, design, construction, or operation of the nuclear power plant." *See* §366.93(1)(a). Costs for licensing activities for a nuclear plant necessarily fall within

recoverable costs under the statute whether those costs are incurred in isolation or concert with costs for other activities for a plant and associated transmission facilities. \*

**PEF's LNP activities are "siting, design, licensing and construction" activities under Section 366.93 and PEF has the intent to build the LNP pursuant to that statute.**

PEF's LNP activities qualify as "siting, design, licensing, and construction" of a nuclear power plant under the provisions of Section 366.93 and Rule 25-6.0423. Section 366.93 provides that all costs associated with siting, design, licensing, and construction of a nuclear power plant are recoverable. The LNP is an active project under an existing NRC licensing application and construction contract. PEF executed its Engineering, Procurement and Construction ("EPC") agreement with Westinghouse and Shaw, Stone & Webster (the "Consortium"), on December 31, 2008 to build two AP1000 nuclear power plants on a site in Levy County. PEF's EPC agreement for the design and construction of the LNP is still in effect. PEF amended that EPC agreement to extend the partial suspension and slow down the project, a decision that the Commission determined was reasonable last year, *see* Order No. PSC-11-0095-FOF-EI, and PEF is implementing that decision this year with the present intent to build the LNP on the current project schedule. (T. 1683-1641, 1680, 1734-1735, 2028, 2053, 2061). PEF is actively pursuing the development of the LNP to build Levy Units 1 and 2 for commercial operation by 2021 and 2022.

As Mr. Elnitsky explained, PEF actions in 2010 and its planned actions in 2011 and 2012 on the LNP are necessary to complete the LNP in time for commercial operation of Levy Unit 1 in 2021 and Levy Unit 2 in 2022. (T. 1695-1697, 1855-1857, 2053). As further described in the direct testimony of Mr. Elnitsky and Ms. Hardison, all costs incurred by PEF in 2010 and projected for 2011 and 2012 for the LNP are specifically related to these efforts to develop and construct the LNP. (T. 1474-1492, 1501-1518, 1662-1697). These costs, therefore, clearly are

nuclear power plant siting, licensing, design, and/or construction costs within the meaning of Section 366.93.

Intervenors speculate, again, that PEF does not have the intent to build the LNP by *ignoring* the evidence of PEF's actions on the LNP in 2010 and 2011 and planned actions in 2011 and 2012. As Mr. Elnitsky made clear, PEF asks the Commission to "judge us by those actions" to determine PEF's intent to build the LNP. (T. 2086). Simply put, PEF's *actions and activities* demonstrate an intent to move forward with and build the LNP. Mr. Elnitsky testified to the Company's actions necessary and consistent with good project management to move the LNP schedule forward on the current plan. (*See, e.g.*, T. 1944-1945). PEF's undisputed actions to develop the LNP in 2010-2012 speak for themselves, they are undisputed and uncontradicted, and they demonstrate the Company's intent to build the LNP.

To elaborate further, Mr. Elnitsky testified in no uncertain terms that the Company is moving forward with work in 2011 and 2012 with the intent of meeting the current estimated in-services dates for Levy Units 1 and 2 in 2021 and 2022. (T. 1697, 2053). During extensive hours of cross-examination Mr. Elnitsky repeatedly explained the Company's plan for the LNP and its intent to move forward with the project on this schedule. (T. 1738, 1743-1744, 1747-1748, 1764, 1768-1771, 1797, 1836, 1930-1931, 2086-2087, 2136-2137). PEF provided the Commission with its current SMC-approved IPP for the LNP and its current project schedule. (Hearing Exhibit Nos. 189 & 212). Both of these exhibits supported Mr. Elnitsky's testimony that the Company's intent is to build the LNP with commercial in-service dates for the Levy nuclear units in 2021 and 2022.

There was no evidence contradicting PEF's evidence of its intent to build the LNP. OPC witness Dr. Jacobs testified that he was not testifying that PEF did not have the intent to build the



LNP. (T. 2029-2030).<sup>5</sup> He only expressed “doubt” in his pre-filed direct testimony that the facts and circumstances demonstrated PEF’s intent to build the LNP. (T. 2006-2007). When Dr. Jacobs was specifically asked *twice* by Commissioners Edgar and Brisé what PEF should be doing that it is not currently doing to exhibit an intent to build the LNP, all Dr. Jacobs could offer in response was that PEF should have sworn testimony that they are planning to build the units in 2021 and 2022. (T. 2036-2038). Mr. Elnitsky has provided sworn testimony that PEF plans to build the Levy units for commercial operation in 2021 and 2022. (T. 1681, 1683, 1697-1698, 1734, 1738, 1743-1744, 1747-1748, 1764, 1768-1771, 1797, 1836). Consequently, even according to Dr. Jacobs, the Company is doing everything that it should be doing to exhibit its intent to build the LNP.

Importantly too, Dr. Jacobs also testified again this year –like last year – that he does not believe that PEF should terminate the EPC agreement (T. 2030), he does not believe the project should be cancelled (T. 2030), and that he thinks that the current timeframe of in-service in 2021 and 2022 is a reasonable schedule. (T. 2034). He further agreed that PEF was “clearly taking the steps needed to achieve receipt of the combined license ... .” (T. 2038). Consistent with Mr. Elnitsky’s testimony, then, Dr. Jacobs has agreed that PEF’s actions demonstrate its intent to build the LNP.

Faced with this evidence from the Company and the only intervenor witness of PEF’s intent to build the LNP, intervenors attempt to distract the Commission from this evidence by playing word games that have no practical application. They challenged the Company’s present

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<sup>5</sup> Dr. Jacobs tried to change this sworn testimony at the hearing. He tried to explain that it was “difficult to say PEF had the intent to proceed with the project” and that PEF’s intent to build the LNP “is decreasing,” but he had to admit that he first testified that he was not saying PEF did not have the intent to build the LNP. (T. 2029-2030). Tellingly, Dr. Jacobs’ attempt to change his testimony by noting that PEF’s intent to build the LNP was, in his view, “decreasing” or “difficult” to identify still does not contradict his testimony that he could not say PEF did not have the intent to build the LNP.

intent to build the LNP based on public statements that the Company has not yet made the “final” and, thus, irreversible decision to build the LNP. FIPUG counsel argued from this statement if PEF’s intent to build should be characterized with a “little i.” (T. 1930). SACE counsel further quibbled with Mr. Elnitsky over the logical implications of this public statement, obtaining Mr. Elnitsky’s qualified agreement with the simplistic logic that generally you need to have made a final decision to do something to say you intend to do something, although Mr. Elnitsky explained that, in this case, it also would be illogical not to do the actions necessary to move forward with the project schedule. (T. 1945-1946). In other words, setting aside the semantics game played by the intervenors, Mr. Elnitsky is saying, for a project like the LNP, you must take the actions necessary to make the final decision to build the LNP or you will never be able to make that final decision to build the LNP. (*Id.*; T. 1930, 2086-2087, 2197). By taking these actions, then, PEF is demonstrating its intent to build the LNP even though it has not yet made the final decision to build the LNP.

To explain further, as Mr. Elnitsky testified, the fact that PEF has not yet made the “final” decision to build the LNP should be no surprise to the intervenors or to anyone else who has ever built anything. Mr. Elnitsky expressed that “we are taking all the actions necessary to move forward with the project above and beyond those required just to get the license. But as I answered in my previous question, we are not taking any actions that are irreversible, so we continue to do that evaluation year over year.” (T. 1930). This is exactly what PEF should be doing on the LNP (or any other major construction project for that matter). There may come a point in the project when the Company’s intent to build Levy Units 1 and 2 in 2021 and 2022 becomes irreversible and, thus, “final” from an economic or practical perspective, but that point has not yet been reached on the LNP, and it would be imprudent for the Company to make that

irreversible decision before the Company has to make it on the LNP or on any other project. (T. 2068).

As Mr. Elnitsky also explained, “the reasonable thing to do from a project management perspective is to continue to review the factors that affect the project each year and adjust those as necessary,” rather than make an ironclad commitment to build a project no matter what the circumstance are or may be on the project. (T. 2197). PEF has not made that “ironclad,” irreversible final decision to build the LNP because it is not prudent to do so at this time. But that irreversible, “final” decision to build the LNP is a separate issue from and it has nothing to do with PEF’s undisputed current intent to build the LNP.

Intervenors further attempt to distract the Commission from the evidence of PEF’s current intent to build the LNP with the Company’s strategic planning scenario analysis documents. Intervenors asserted in their questions that these documents say things they do not say and mean things they do not mean, (*see, e.g.*, T. 1812, 1818), and they repeatedly intervened to stop Mr. Elnitsky from explaining his answers denying these allegations in their questions about the documents. (*See, e.g.*, T. 1778-1779, 1811-1812, 2097-2098). They never asked Mr. Elnitsky to explain the scenarios in these documents, the reasons for them, or how they were actually used. (*See, e.g.*, T. 1742-1844). These actions demonstrate that, just as PEF warned this Commission in its opening statement, the intervenors did not want this Commission to read the scenario analysis documents or understand what they meant from the one witness who knew what they were. They wanted to distract the Commission from the truth that these scenario analysis documents have nothing to do with the Company’s current plan for the LNP and, therefore, they have nothing to do with the Company’s present intent to build the LNP.

Mr. Elnitsky explained these scenario analysis documents in his pre-filed rebuttal testimony and in his hearing testimony. (T. 2069-2075). He explained that these scenario

analyses were a series of environmental “what-if” scenarios that the Company performed to think about how PEF would potentially respond to a myriad of potential environmental regulations. (T. 1774, 1830). Mr. Elnitsky stated the process was really “environmentally focused” in terms of changes that were or potentially could happen regarding environmental regulations. (T. 1775). As Mr. Elnitsky further explained:

The reasons that the detailed scenario planning was done in 2010, as well as the reason that to some extent it is done each year was because we think as a Company it is important for us to stay informed and aware of potential changes in our environment that could drive how we think about these programs of record. It is really based on a pretty common technique. It is Peter Sways (phonetic) book on the art of the long view. That’s what lays this out. And he says try to write down in specific titles different views of the future world, and then use those to try to stress your thinking around your different projects. So that’s why we undertook this. It’s not that dissimilar to what we have done each year. I think it’s important for us to do. It informs how we run the business, and I think it’s what the Commission would expect of us.

(T. 1825-1826). These scenario analyses, then, were strategic planning documents for the combined PEF and Progress Energy Carolinas, Inc. (“PEC”) operations to begin thinking strategically about hypothetical business environment scenarios that could conceivably occur in the future, however unlikely they may be to occur. (T. 2069). They were not part of the Company’s annual resource planning or planning for the LNP. (T. 2070).

The significance of these scenario analyses to senior management also was overlaid by the intervenors. The August SMC retreat was not “devoted” to the review and consideration of the strategic scenario analyses. (T. 2153). As Mr. Elnitsky explained, the strategic scenario planning was perhaps *two hours of a two day event* for the SMC. (T. 2193-2194). They were PowerPoint presentations that were presented to SMC and then filed away when the presentation was complete and the SMC retreat ended. They were not Company management documents executed by the SMC for any purpose or project. (T. 2195).

The SMC-approved project management document for the LNP is the LNP March 2011 IPP. (Hearing Exhibit No. 189). The March 2011 LNP IPP included signatures by the SMC, including the Progress Energy CEO and Chairman of the Board of Directors, approving the LNP plan as articulated in the IPP and approving the budget requirements for the LNP for the next 12 months. (Hearing Exhibit No. 189). The LNP IPP was executed by the SMC months after the August 2010 strategic scenario presentations to the SMC. (T. 2195-2196). The March 2011 LNP IPP clearly demonstrates the Company's present intent to build the LNP.

In 2011 and 2012, PEF will continue work on the LNP, consistent with the March 2011 LNP IPP. (T. 2060-2061). The intervenors introduced no evidence to contradict the fact that work on these activities on the LNP is taking place and will take place throughout 2011 and 2012. This evidence demonstrates PEF's intent to build the LNP in compliance with Section 366.93.

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

**PEF Position:**

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

**PEF's 2010 Project Management, Contracting, Accounting and Cost Oversight Controls for the LNP are Prudent.**

The undisputed evidence demonstrates that PEF's 2010 project management, contracting, accounting and cost oversight controls for the LNP are reasonable and prudent. PEF's witnesses, Mr. Garrett and Ms. Hardison presented undisputed evidence that PEF's project management, contracting, accounting and cost oversight controls for the LNP were reasonable and prudent. (T.1407-1412, 1492-1500, 1518-1519). No one challenged this testimony.<sup>6</sup> This evidence was further supported by Staff witnesses, Mr. Jeffery Small, and his favorable financial audit of the LNP, and Mr. William Coston and Mr. Kevin Carpenter, and their favorable Staff audit of the LNP project management and controls. (T. 1521-1524 & Exh. No. 171; 1526-1528 & Exh. No. 172). Consequently, the undisputed record evidence demonstrates that PEF's 2010 project management, contracting, accounting and cost oversight controls for the LNP are reasonable and prudent.

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

**REDACTED**

**PEF Position:**

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

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

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

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<sup>6</sup> OPC witness Dr. Jacobs agreed that he expressed no opinion this year regarding the prudence of the Company's LNP project management, contracting, accounting and cost oversight controls because he was not asked to review them. (T. 1994, 2016).

**The Undisputed Evidence Demonstrates that PEF's Actual  
2010 Costs Incurred for the LNP are Prudent.**

The undisputed evidence presented by PEF witnesses Ms. Hardison, Mr. Garrett and Mr. Elnitsky demonstrates that the costs PEF incurred in 2010 for the LNP are prudent. (T. 1389-1402 & Exh. No. 136; 1474-1492, 1662-1677). No intervenor presented any evidence challenging the prudence of PEF's 2010 LNP actual costs. OPC witness Dr. Jacobs agreed that his assignment included the review of PEF's historical or actual costs and that he had no opinion that any 2010 LNP actual costs incurred were imprudent. (T. 2017). OPC and PCS took "no position" on this issue in the Prehearing Order. Therefore, the undisputed evidence demonstrates that PEF's actual 2010 costs for the LNP are prudent.

**ISSUE 26: WITHDRAWN**

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

**PEF Position:**

\* Yes. All estimated 2011 costs presented by PEF for recovery are necessary for the LNP schedule to remain on track for the estimated planned LNP in-service dates of 2021 and 2022. No intervenor credibly disputed Mr. Elnitsky's testimony that all costs (COL related and non-COL related) are necessary for the project schedule. Under the nuclear cost recovery statute and rule PEF is entitled to recover all reasonably incurred costs. No intervenor has challenged the reasonableness of any LNP 2011 costs as not necessary for the project or unreasonable in amount estimated, therefore, PEF is entitled to recover all of its estimated 2011 LNP costs. \*

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

REDACTED

**PEF Position:**

\*Consistent with PEF's response to Staff POD 1 Question 3:

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

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

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

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

**PEF Position:**

\* Yes. As testified to by Mr. Elnitsky, all projected 2012 costs presented by PEF for recovery are necessary for the LNP schedule to remain on track for the planned in-service dates of 2021 and 2022. No intervenor credibly disputed Mr. Elnitsky's testimony that all costs (COL related and non-COL related) are necessary for the project schedule. Under the nuclear cost recovery statute and rule PEF is entitled to recover all reasonably incurred costs. No intervenor has challenged the reasonableness of any LNP 2012 costs as not necessary for the project or unreasonable in amount estimated, therefore, PEF is entitled to recover all of its projected 2012 LNP costs. \*

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

REDACTED

**PEF Position:**

\*Consistent with PEF's response to Staff POD 1 Question 3:

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



**PEF's 2011 actual/estimated and 2012 projected LNP costs are reasonable in amount and necessary for the LNP schedule and, therefore, under Section 366.93, PEF is entitled to recover all reasonably incurred costs.**

The undisputed evidence presented by PEF witnesses Mr. Elnitsky, Ms. Hardison and Mr. Foster demonstrates that PEF's actual/estimated 2011 and projected 2012 costs for the LNP are reasonable. (T. 1501-1518, 1537-1555 & Exh. Nos. 149, 150, 151; 1678-1698, 1734-1735). OPC's witness Dr. Jacobs reviewed and evaluated PEF's request for authority to collect actual/estimated 2011 and projected 2012 costs associated with the LNP and he agreed he expressed no opinion that any specific, estimated 2011 or 2012 LNP cost is unreasonable in amount or unnecessary for the project. (T. 1992, 2022-2026). In fact, Dr. Jacobs specifically agreed that the costs for an updated transmission study, the Full Notice to Proceed ("FNTP") preparations and negotiations, and the other, non-COL preconstruction and construction costs were necessary for the project. (T. 2022-2026). Staff witnesses also reviewed the LNP and they did not identify any specific 2011 or 2012 LNP cost that is unreasonable or unnecessary for the LNP. (T. 1521-1524 & Exh. No. 171; 1526-1528 & Exh. No. 172). The evidence demonstrates, then, that PEF's actual/estimated 2011 and projected 2012 LNP costs are reasonable.

OPC and the other intervenors alternatively request the Commission to determine as unreasonable or defer PEF's recovery of its actual/estimated 2011 and projected 2012 LNP costs that are not necessary for receipt of the LNP COL and *not yet incurred* by the Company. (T. 2010-2011, 2014, 2137). They claim the Commission can make this determination because of alleged uncertainty regarding PEF's intent to move forward with the project even though they concede they are not contesting the reasonableness of PEF's actual/estimated 2011 and projected

2012 LNP costs. (T. 1847-1848, 2022-2024, 2026).<sup>7</sup> Indeed, OPC made clear in its questions of Mr. Elnitsky that OPC is requesting the Commission to disapprove cost recovery for costs *reasonably incurred* for the siting, design, engineering, or construction of new nuclear power plants. (T. 2014, 2137).

Q. (By OPC). Would you agree that Dr. Jacobs is recommending that the Commission deny recovery for certain *reasonable* costs in 2011 and 2012, is that correct, and those are non-COLA costs?

A. That's correct.

(T. 2137) (emphasis added). This the Commission cannot do. The Commission would be acting in contravention to the applicable rule and statute by disapproving costs for aspects of the development of new nuclear power plant capacity, other than the licensing costs necessary to obtain the LNP COL, even if those costs are reasonable for the LNP. *See* Rule 25-6.0423(5),(c) 3 (“The Commission shall include those costs it determines, pursuant to this subsection, to be reasonable or prudent in setting the Capacity Cost Recovery Clause factor in the annual Fuel and Purchased Power Cost Recovery proceedings.”). Under the nuclear cost recovery statute and rule, PEF is entitled to recover all reasonably incurred costs. § 366.93, *Fla. Stat.*; Rule 25-6.0423, F.A.C.

No intervenors presented any evidence disputing the reasonableness of 2011 actual/estimated and 2012 projected LNP costs. The Commission cannot disallow cost recovery of reasonable costs for new nuclear power plant capacity under Rule 25-6.0423(5)(c)2, F.A.C. The Commission is required by rule to determine the reasonableness of estimated LNP costs and, if they are found to be reasonable, include them in setting the CCRC factor in the annual Fuel

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<sup>7</sup> PEF addresses the alleged uncertainty surrounding its intent to proceed with the project and its intent to build the LNP in response to Issue 23 above.

and Purchased Power Cost Recovery proceedings. Rule 25-6.0423(5)(c)3, F.A.C. To do otherwise would constitute an arbitrary and capricious ruling, subject to reversal on appeal.

There is no evidence that any non-COL related LNP costs are unreasonable because they are not necessary for the LNP at this time. Mr. Elnitsky testified that *all* 2011 actual/estimated costs are reasonable and necessary to proceed with the LNP and meet its current schedule. (T. 1695-1697, 1855, 2053). Mr. Elnitsky further explained, “[i]n order to continue the project and the work activities that are necessary to bring the plants in service in ’21 and ’22, there is a set of activities that have to go on now and a rather extensive list of work that continues above and beyond just that work that is focused on achieving the license.” (T. 1855). Mr. Elnitsky also testified that if non-COL related activities such as the updated transmission study work, land acquisition for transmission, transmission design and construction work, and FNTF negotiations and preparations are not allowed to proceed, then, this could put the project schedule in jeopardy. (T.1855, 1857-1858, 1938-1939). While some of these items are not currently “critical path” items on the LNP Readiness Requirements Timeline project schedule, (Hearing Exhibit No. 212), as Mr. Elnitsky explained, if these non-COL activities are not started on the schedule contemplated, even considering the float the Company prudently included in the schedule, these items would likely become critical path items. (T. 2162-2163, 2181-2182, 2186-2187, 2188-2189).

Despite contesting that the non-COL LNP activities were critical path items, Dr. Jacobs admitted that he has no reason to disagree with Mr. Elnitsky that non-COL related preconstruction and construction work would be necessary to meet the LNP in-service dates of 2021 and 2022. (T. 2026).<sup>8</sup> What’s more, when pointedly asked by Commissioners the basis for

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<sup>8</sup> Dr. Jacobs, in fact, agreed that acceleration of these activities after COL receipt would be necessary to meet the planned in-service dates if the activities are delayed now. (T. 2041). It

his statement that the non-COL LNP activities were not critical path activities and would not affect the LNP in-service dates of 2021 and 2022, Dr. Jacobs admitted that he did not even review the detailed project schedule. (T. 2041-2043). This, despite the fact that Dr. Jacobs attended the 13-hour deposition of Mr. Elnitsky where a critical path schedule was discussed and which unequivocally showed that transmission work was, in fact, on the critical path. (See Hearing Exhibit No. 212). Mr. Elnitsky emphatically disagreed with Dr. Jacobs and repeatedly testified that it is necessary for the Company to incur all 2011 and 2012 LNP costs in order to meet the 2021 and 2022 LNP in-service dates. (T. 1695-1697, 1855, 1857-1858, 1938-1939, 2053, 2162-2163).

In addition, in the 2010 NCRC docket, the Commission determined that PEF's decision to proceed with the LNP on a slower pace is reasonable. See Order No. PSC-11-0095-FOF-EI, Docket No. 100009-EI, p. 35 (Feb. 2, 2011). The Company is incurring LNP costs in 2011 and 2012 consistent with this decision. (T. 2140-2141). OPC witness Dr. Jacobs agreed that the Commission determined that the Company's decision to proceed with the LNP is reasonable and that this decision did not limit the recovery of costs incurred as a result of that decision *in any way*. (T. 2017-2018). No party challenged the Commission's determination that PEF's decision to proceed with the LNP is reasonable by appealing that decision. Therefore, no intervenor should be allowed to collaterally attack that determination by requesting the Commission to limit the recovery of reasonable costs incurred by the Company's implementation of that decision.

For all of these reasons, the Commission should determine that the credible evidence of record demonstrates that all COL-related and non-COL related 2011 and 2012 LNP costs are

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stands to reason that if acceleration of activities is required that would increase the project costs. Thus, OPC's request at best will require an increase in costs to meet the current project schedule and, at worst, will delay the project.

necessary to be incurred for the LNP to proceed on its current schedule and reasonable in amount. Therefore, PEF is entitled to recover these costs from customers.

**CR3 UPRATE PROJECT:**

**ISSUE 29: Should the Commission approve what PEF has submitted as its 2011 annual detailed analysis of the long-term feasibility of completing the Crystal River Unit 3 Uprate project, as provided for in Rule 25-6.0423, F.A.C? If not, what action, if any, should the Commission take?**

**PEF Position:**

\*This issue was deferred to the 2012 NCRC proceeding based on the Commission granting PEF's Motion for Deferral on August 10, 2011.\*

**ISSUE 30: STRICKEN.**

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

*This issue is subject to the stipulation approved on August 16, 2011 and entered as Hearing Exhibit No. 203.*

**PEF, OPC, SACE, FEA, FIPUG, PCS:**

\*Pursuant to the stipulation entered August 15, 2011 [Hearing Exhibit No. 203], as a compromise in settlement, Progress Energy Florida (PEF) agrees to permanently forgo collection of \$500,000 in Project Management Costs to resolve Issue 31. This adjustment will be recognized in the order issued in Docket 110009-EI, but the full revenue requirement effect will be reflected as a true-up in the March 2012 NFRs. This agreement resolves this issue.

For 2009 & 2010 CR3 EPU project costs, the parties do not object to the Commission making a final prudence determination for those costs pursuant to Section 366.93 and 403.519(4), Fla. Stat. in the 2011 NCRC docket. In so agreeing the parties maintain and do not waive, concede, or give up their right to offer any testimony in any other FPSC docket, nor do they waive, concede, or give up any remedy at law that may exist in any other docket.\*

**ISSUE 32: Should the Commission find that for 2010, PEF's project management, contracting, accounting and cost oversight controls were reasonable and prudent for the Crystal River Unit 3 Uprate project? If not, what action, if any, should the Commission take?**

*This issue is subject to the stipulation approved on August 16, 2011 and entered as Hearing Exhibit No. 203.*

**PEF Position:**

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

**ISSUE 33: What system and jurisdictional amounts should the Commission approve as PEF's 2009 and 2010 prudently incurred costs for the Crystal River Unit 3 Uprate project?**

*This issue is subject to the stipulation approved on August 16, 2011 and entered as Hearing Exhibit No. 203.*

**PEF Position:**

\* Based on the March 1, 2011 testimony and exhibits of Mr. Garrett and Mr. Franke:

2009:

Capital Costs (System) \$117,640,493; (Jurisdictional, net of joint owners) \$87,028,310.

O&M Costs (System) \$821,773; (Jurisdictional, net of joint owners) \$762,529

Carrying Costs \$14,351,595 and a base revenue requirement of \$396,018.

The over recovery of \$244,745 should be included in setting the allowed 2011 NCRC recovery. The 2009 variance is the sum of an O&M over-projection of \$9,999, under-projection of carrying charges of \$122,005 and an over-projection of adjustments of \$356,771.

2010:

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

O&M Costs (System) \$917,972; (Jurisdictional, net of joint owners) \$823,467

Carrying Costs \$10,106,450 and a base revenue requirement credit of \$2,901,536.

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

Pursuant to the stipulation entered August 15, 2011, the parties do not object to the Commission making a final prudence determination for 2009 and 2010 CR3 EPU costs pursuant to Section 366.93 and 403.519(4), *Fla. Stats.* in the 2011 NCRC docket. In so agreeing the parties maintain and do not waive, concede, or give up their right to offer any testimony in any other FPSC docket, nor do they waive, concede, or give up any remedy at law that may exist in any other docket. \*

**ISSUE 34: What system and jurisdictional amounts should the Commission approve as reasonable actual/estimated 2011 costs and estimated true-up amounts for PEF's Crystal River Unit 3 Uprate project?**

**PEF Position:**

\* This issue was deferred based on the Commission granting PEF's Motion for Deferral on August 10, 2011. Consistent with PEF's motion for deferral granted on August 10, 2011, which used PEF's response to Staff POD 1 Question 3 as the basis for the Revenue Requirement calculation updated for changes as identified in the motion, PEF is not requesting a review of reasonableness of capital spend at this time.

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

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

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

**PEF Position:**

\* This issue was deferred based on the Commission granting PEF's Motion for Deferral on August 10, 2011.

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

O&M Costs (System) \$0; (Jurisdictional, net of joint owners) \$710 prior period credit.  
Carrying Costs \$12,875,746 and a base revenue requirement credit of \$3,261,939. \*

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

**PEF Position:**

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

**PEF's Proposed LNP Rate Management Plan Appropriately Balances Current and Future Rate Impacts to Customers and Should Be Approved.**

As testified to by Mr. Foster, in Order No. PSC-09-0783-FOF-EI, in Docket No. 090009-EI, the Commission approved PEF's proposed rate management plan, but also required PEF to annually file updated rate management plan testimony and schedules with its NCRC schedules to address any reconsideration of changes in the deferred amount and recovery schedule. (T. 1567). For 2012, PEF is requesting the Commission approve recovery of the amortization of \$115 million of the remaining deferred balance as well as the associated carrying costs of \$15.1 million.

The difference between what PEF had shown last year for 2012 and has requested this year in its rate management plan is less than \$55 million. (T. 1567). As described in Hearing Exhibit No. 185 and by Mr. Foster (T. 1568), the 2011 LNP impact on residential rates is \$4.99



and the estimated 2012 impact under PEF's updated rate management plan is \$4.47. (T. 1568 & Exh. No. 185). This is actually a decrease in rates from 2011 to 2012 of just over 10%. It is true that if the Commission decides to continue to defer more of what has already been approved as recoverable that 2012 rates will be even lower; however, PEF does not believe it is prudent to only consider the current year when updating its rate management plan.

Consistent with Order No. PSC-09-0783-FOF-EI, where the Commission noted there should be flexibility to manage rates and PEF should annually reconsider changes to the deferred amount and recovery schedule, PEF is proposing to increase the amortization of the deferred balance in 2012 as compared to the original proposal from 2009, because PEF has looked at both the short term and long term implications of the amortization schedule. In the short term, there is an opportunity to reduce the outstanding balance of already approved for recovery costs while still decreasing the overall NCRC rate from 2011 to 2012. This also has the benefit of reducing the carrying costs to customers over the next several years. In 2013 and 2014, there is expected to be a significant increase in spending associated with the LNP. In this timeframe there will be pressure on rates and considering this, it does not make sense to defer an additional \$57 million out to 2014 when rate pressure for the LNP is expected to be higher. (T. 1568).

No intervenors provided any evidence disputing the methodology or the logic behind PEF's proposed plan. Nor did any intervenor suggest that PEF's proposal would not balance rates in the future or provide any convincing reasons as to why PEF's rate management plan should not be approved. OPC witness Dr. Jacobs argued he does not believe rates should be any higher because of the "trying economic time for PEF's customer." (T. 2009). Interestingly, he also agreed that the Company should not cancel the project (T. 2030), agreed the LNP remains feasible, (T. 2026-2027), and agreed the project schedule is reasonable. (T.2035). Dr. Jacobs

provides no indication of how he proposes to manage rates past 2012; he merely does not want rates to change now.

Dr. Jacobs also presents another distraction by insinuating that PEF's rate management plan proposal in some way indicates that PEF is going to cancel the project. (T. 2009). Not only is this incorrect, but it is also illogical. As Mr. Elnitsky testified, PEF's rate management plan proposal is actually an indication of the Company's commitment to build the Levy Units 1 and 2 on schedule with in-service dates of 2021 and 2022 because PEF proposes its current rate management plan to reduce the customer rate impact due to the LNP in 2013 and 2014 when the Company plans to increase spending on the LNP to meet the 2021 and 2022 in service dates. (T. 2054, 2083-2084). Additionally, PEF is entitled to recover the costs under the LNP rate management plan no matter what decision the Commission makes with respect to the Company's proposal. (T. 2031, 2084). These dollars are not subject to disallowance. (T. 1868-1869, 2054, 2083-2084). These costs were determined prudent and PEF is entitled to recover them whether or not PEF in the future cancels the LNP or completes the LNP. (T. 2084).

Moreover, intervenor insinuations in opening arguments that PEF is robbing customers of a refund by proposing an updated rate management plan and amortization schedule of costs already approved for recovery is a mischaracterization of what PEF is proposing and why PEF is proposing it. In fact, the refund does flow back to customers within the calculation of 2012 rates. (See Hearing Exhibit No. 150, schedule P-1 of the Levy NFR schedules attached to Mr. Foster's testimony). PEF is seeking the best possible way to keep rates as consistent as possible as rate pressure is necessarily increased in years 2013 and 2014 for the LNP. (T. 1555, 2083-2084). PCS's suggestion to "spread costs out further" is ill-advised when the Commission looks at anticipated rate pressure in 2013 and beyond. As noted above, these amounts have already been approved for recovery, but deferred in an effort to manage annual rate impacts. (T. 1552, 1569).

This means it is not a question of whether these dollars will be collected in rates at some point, it is only a question of when. Therefore, the longer these collections are deferred, the more carrying costs will accrue on them. (T. 1535, 1573, 1651). PEF believes, then, it is appropriate to take advantage of this opportunity to amortize the deferred balance down faster, considering that this will still result in a decrease in the NCRC rate from 2011 to 2012, while also recognizing that rate impacts are expected to increase in 2013 and 2014, therefore, decreasing the carrying costs the ratepayer will ultimately have to pay. (T. 1555, 1651).

For all of these reasons, PEF’s proposed rate management plan should be approved.

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

**PEF Position:**

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

**APPENDIX A**

<b>PEF - Total Jurisdictional Amount for 2012 Capacity Cost Recovery Clause Factor Summary</b>			
		<b>(A)</b>	<b>(B) *</b>
<b>TOPIC</b>		Reference: PEF March 1 & May 2, 2011 NCRC Filings	Reference: Motion July 1, 2011
<b>CR 3 Uprate</b>			
	CR3 Uprate 2010 Final True-up	\$ 108,602	\$ 108,602
	CR3 Uprate 2011 Estimated True-up	(609,715)	(4,127,377)
	CR3 Uprate 2012 Projections	22,740,705	9,613,098
	CR3 Uprate Subtotal	\$ 22,239,592	\$ 5,594,323
	Rev Tax Multiplier	1.00072	1.00072
<b>CR3 Uprate Total</b>		<b>\$ 22,255,605</b>	<b>\$ 5,598,350</b>

<b>Levy Nuclear Project</b>			
	Levy 2010 Final True-up	\$ (60,743,424)	\$ (60,743,424)
	Levy 2011 Estimated True-up	5,775,063	5,775,217
	Levy 2012 Projections	75,324,768	75,324,920
Amortization of Reg Asset		114,968,361	114,968,361
	Levy Subtotal	\$ 135,324,768	\$ 135,325,074
	Rev Tax Multiplier	1.00072	1.00072
<b>Levy Total</b>		<b>\$ 135,422,202</b>	<b>\$ 135,422,508</b>
<b>NCRC Subtotal Amount</b>			
		\$ 157,564,361	\$ 140,919,397
	Rev Tax Multiplier	1.00072	1.00072
<b>NCRC Total Amount</b>		<b>\$ 157,677,807</b>	<b>\$ 141,020,859</b>
<p>* Staff POD 1 Q3 was used as basis for the Revenue Requirement calculation and updated for changes as identified in the July 1, 2011 motion.</p>			

## APPENDIX B

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

**Levy 2012 PEF Levy 1 & 2 Revenue Requirement Summary Assuming LNP Scenario**

**B**

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

**Proposed NCRC Revenue Requirements for 2012 CCRC  
(After Revenue Tax Multiplier)**

**141,020,859**

**III. CONCLUSION.**

Section 366.93 requires that the Commission allow the recovery of prudent and reasonable nuclear project costs. The evidence demonstrates that PEF's LNP and CR3 Uprate costs are either prudent or reasonable. No party presented any convincing contrary evidence. PEF also demonstrated the long-term feasibility of completing the LNP. The Commission should therefore permit the recovery of all of PEF's costs in this proceeding.

For all of the foregoing reasons, the Commission should grant PEF's Petition for Cost Recovery through the NCRC for its CR3 Uprate project and LNP.

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY a true and correct copy of the foregoing has been furnished to counsel and parties of record as indicated below via electronic and U.S. Mail this 8<sup>th</sup> day of September, 2011.

  
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