

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

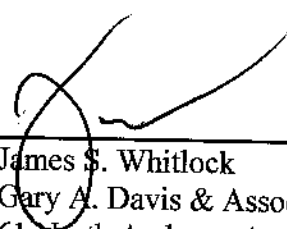
**In re: Nuclear Plant Cost
Recovery Clause**

**DOCKET NO. 090009-EI
FILED: September 18, 2009**

**SOUTHERN ALLIANCE FOR CLEAN ENERGY'S NOTICE OF FILING OF POST-
HEARING STATEMENT AND BRIEF**

The Southern Alliance for Clean Energy ("SACE"), by and through counsel, respectfully gives notice of filing of the Southern Alliance for Clean Energy, Inc.'s Post-Hearing Statement and Brief (attached hereto) in the above-styled docket.

This the 18th day of September, 2009.



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SOUTHERN ALLIANCE FOR CLEAN ENERGY, INC.**

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Pursuant to Order No. PSC-09-0604-PHO-EI, issued on September 4, 2009, establishing the pre-hearing and post-hearing procedure in this docket, the Southern Alliance for Clean Energy, Inc., hereby files its Post-Hearing Statement and Brief.

POST-HEARING STATEMENT

I. STATEMENT OF BASIC POSITION

Rule 25-6.0423, F.A.C. ("Rule") explicitly and unequivocally requires, as part of the cost recovery mechanism, utilities to submit for Commission review and approval a detailed analysis demonstrating the long-term feasibility of completing the nuclear power plant. The requirements embodied in Rule 25-6.0423(5)(c)5 are a part of the cost recovery Rule and are not superfluous. Therefore, there has to be consequences in the cost recovery framework for failing to demonstrate the long-term feasibility of completing a project. If a utility fails to submit a detailed analysis demonstrating long-term feasibility for a proposed project as required by Rule 25-6.0423(5)(c)5, then logic and common sense dictate that the utility's estimated and projected costs (i.e., future costs) cannot be found to be reasonable under the Rule, and the utility should not be permitted to recover them.

In the instant docket, both Florida Power & Light ("FPL") and Progress Energy Florida ("PEF") (collectively "utilities") have failed to comply with the requirement to submit a detailed analysis of long-term feasibility for their proposed reactors (FPL's Turkey Point 6 and 7, PEF's Levy 1 and 2). Based upon this failure, the Commission has no choice but to disapprove the filings and find that the utilities have failed to demonstrate long-term feasibility. As a result, the Commission should find that the utilities' estimated 2009 and projected 2010 costs are unreasonable and deny cost recovery for both FPL and PEF's for these costs. Without an affirmative finding of long-term feasibility, there is

simply no reasonable basis for permitting recovery of any future costs for development of these reactors.

Ultimately, because both FPL and PEF have failed to demonstrate to the Commission that completion of these proposed reactors power plant is feasible in the long-term, the Commission would be remiss to require rate-payers to continue bearing the financial burden and risk of these proposed reactors. This is especially true given the fact that both FPL and PEF have testified that, to date, they have not made the "go-no-go" decision of whether or not to actually construct these reactors. Thus, the utilities are simply spending their rate-payers money, with no risk to their own bottom lines, without even making a firm commitment to actually construct these reactors after potentially billions of dollars are spent. Furthermore, both FPL and PEF refuse to provide the Commission or their rate-payers with updated estimates of the total project cost of these proposed reactors, presumably because the estimates have risen since the need determinations were issued and would demonstrate that the proposed reactors are no longer the most cost-effective source of power for Florida customers. The Commission needs to send a strong message to the utilities, and the rate-payers, that if the technical, regulatory, and economic feasibility of completing these nuclear reactors cannot be demonstrated on an annual basis, as required by Rule 25-6.0423(5)(c)5, the ratepayers will not be required to continue to bear the risk that the utilities would not bear themselves.

II. STATEMENT OF ISSUES AND POSITIONS

Florida Power & Light

ISSUE 8: Should the Commission approve what FPL has submitted as its annual detailed analyses of the long-term feasibility of completing the Turkey Point 6 & 7 project, as provided for in Rule 25-6.0423, F.A.C?

SACE Position: ***No. FPL has not submitted the detailed analysis required by Rule 25-6.0423(5)(c)5. FPL's economic analysis was based on a low, outdated total project cost estimate range and was centered on an unrealistic set of assumptions. The analysis also failed to consider regulatory and technological feasibility.***

ISSUE 8A: If the Commission does not approve FPL's long term feasibility analyses of Turkey Point 6 & 7, what further action, if any, should the Commission take?

SACE Position: ***The commission should deny cost recovery for FPL's estimated 2009 and projected 2010 costs.***

ISSUE 16: What system and jurisdictional amounts should the Commission approve as reasonably estimated 2009 costs for FPL's Turkey Point Units 6 & 7 project?

SACE Position: ***None. FPL has not demonstrated long-term feasibility as required by Rule 25-6.0423(5)(c)5, F.A.C, therefore no such costs could be reasonably or prudently estimated and/or incurred.***

ISSUE 17: What system and jurisdictional amounts should the Commission approve as reasonably projected 2010 costs for FPL's Turkey Point Units 6 & 7 project?

SACE Position: ***None. FPL has not demonstrated long-term feasibility as required by Rule 25-6.0423(5)(c)5, F.A.C, therefore no such costs could be reasonably or prudently projected and/or incurred.***

Progress Energy Florida

ISSUE 21: Should the Commission find that for the year 2008, PEF's project management, contracting, and oversight controls were reasonable and prudent for Levy Units 1 & 2 project and the Crystal River Unit 3 Uprate project?

SACE Position: ***No. In regard to the Levy Units 1 & 2 project, PEF unreasonably and imprudently relied upon the assumption that the NRC would grant PEF a LWA as requested in its COLA, and made fundamental contracting, scheduling, and cost assumptions based on this assumption.***

ISSUE 21A: Was it reasonable and prudent for PEF to execute its EPC contract at the end of 2008? If the commission finds that this action was not reasonable and prudent, what actions, if any, should the Commission take?

SACE Position: ***No. PEF unreasonably relied upon the assumption that the NRC would grant PEF a LWA, and made fundamental contracting, scheduling, and cost decisions based on this assumption. The Commission should deny cost recovery for PEF's 2009 and 2010 costs that would be incurred as a result of executing the EPC.***

ISSUE 23: Should the Commission approve what PEF has submitted as its annual detailed analysis of the long-term feasibility of continuing construction and completing the Levy Units 1 & 2 project, as provided for in Rule 25-6.0423, F.A.C., and Order No. PSC-08-0518-FOF-EI (Determination of Need Order)?

SACE Position: ***No. PEF has not submitted the detailed analysis required by Rule 25-6.0423(5)(c)5. PEF's May 1, 2009 long-term feasibility analysis was at best a qualitative description of vague future plans and contained no economic analysis whatsoever.***

ISSUE 23A: If the Commission does not approve PEF's long term feasibility analysis of Levy Units 1 & 2, what further action, if any, should the Commission take?

SACE Position: ***The commission should deny cost recovery for PEF's estimated 2009 and projected 2010 costs.***

ISSUE 23B: What further steps, if any, should the Commission require PEF to take regarding the Levy Units 1 & 2?

SACE Position: ***At a minimum, PEF should have to demonstrate that Levy Units 1 & 2 are the least-cost alternative of supplying a properly projected demand for power when the project is reasonably expected to come online.***

ISSUE 30: What system and jurisdictional amounts should the Commission approve as reasonably estimated 2009 costs for PEF's Levy Units 1 & 2 project?

SACE Position: ***None. PEF has not demonstrated long-term feasibility as required by Rule 25-6.0423(5)(c)5, F.A.C. Therefore, no such costs could be reasonably or prudently estimated and/or incurred.***

ISSUE 31: What system and jurisdictional amounts should the Commission approve as reasonably projected 2010 costs for PEF's Levy Units 1 & 2 project?

SACE Position: ***None. PEF has not demonstrated long-term feasibility as required by Rule 25-6.0423(5)(c)5, F.A.C. Therefore no such costs could be reasonably or prudently projected and/or incurred.***

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**POST-HEARING BRIEF OF THE
SOUTHERN ALLIANCE FOR CLEAN ENERGY, INC.**

I. INTRODUCTION

The Southern Alliance for Clean Energy ("SACE") has presented strong expert testimony demonstrating that neither FPL nor PEF have taken the requirement to demonstrate the long-term feasibility of their nuclear power projects seriously. Testimony of witnesses during the hearing before the Commission reinforced SACE's expert testimony. It is obvious under the circumstances that the utilities would never bet their own money on the long-term feasibility of these projects. Therefore, they should not be permitted to continue to bet the ratepayers money.

As noted by FPL witness Scroggs, there are lessons to be learned from the nuclear development boom of the 1970's. *See* Ex. 134; TR 162. Unfortunately, neither FPL nor PEF seem to be taking note of to these lessons as they attempt to proceed with the proposed reactors at issue in this docket. Of the 116 nuclear units that were under construction at the time of Three Mile Island in 1979, 66 were cancelled, and only 50 were completed, with an average delay of 6.3 years. *See* Ex. 134; TR 163-164. In fact, even before Three Mile Island, nuclear units were experiencing cost overruns of up to 249%. *See* Ex. 134; TR 164. Moreover, as admitted by Mr. Scroggs, and testified to in some detail by SACE witnesses Cooper and Gundersen, these issues of regulatory uncertainty, design changes,

and economic pressures are still problematic today. *Id.* As a result, Moody's Global Infrastructure Finance has stated that "[W]e view nuclear generation plans as a 'bet the farm' endeavor." *See, e.g.,* Ex. 63. Although FPL and PEF claim to have learned from this history, the current docket shows that this is simply not the case. Since Determinations of Need were issued by this Commission for Turkey Point 6 & 7 and the LNP, conditions have changed dramatically and ultimately demonstrate that the completion of these proposed reactors is simply not feasible in the long-term.

In this Brief, SACE focuses on the lack of long-term feasibility for both utilities' nuclear projects. SACE relies upon and incorporates by reference the briefs of the other intervenors to support SACE's positions on Issues 21 and 22.

A. FLORIDA POWER & LIGHT

On May 1, 2009, Florida Power & Light ("FPL"), pursuant to Section 366.93, Fla. Stat., and Rule 25-6.0423, F.A.C., filed with the Commission a Petition for Approval of Nuclear Power Plant Cost Recovery. The Petition seeks recovery of costs (actual, estimated and projected) in the amount of \$62,792,990 relating to FPL's proposed Turkey Point 6 & 7 nuclear reactors ("Turkey Point 6 & 7") and an extended power uprate project.¹ The Petition further requests that the Commission make a finding that all of FPL's estimated 2009 costs and projected 2010 costs for the Turkey Point project are reasonable. FPL Petition, at 1-2.

Also on May 1, 2009, FPL filed the prefiled testimony of five (5) witnesses in support of its Petition for Cost Recovery. This included the prefiled testimony of Steven R. Sim, whose testimony included a "feasibility analysis" intended to satisfy the requirements

¹ SACE takes no position on any issues relating to FPL's extended power uprate project and will not address the uprate project herein.

of Rule 25-6.0423(5)(c)5. On July 15, 2009, SACE and other intervenors filed their prefiled testimony in this docket in response to FPL's prefiled testimony. SACE submitted the prefiled testimony of Dr. Mark Cooper and Arnold Gundersen. Dr. Cooper identified dramatically changed circumstances since the Determination of Need for the Turkey Point project was issued in April 2008 and concluded that as a result of these changed circumstances, FPL's Turkey Point 6 and 7 are not feasible in the long term. He also pointed out the serious deficiencies in FPL's "feasibility analysis." Mr. Gundersen identified major scheduling, licensing and construction obstacles facing the Turkey Point project and concluded that the cost of the project would increase as a result of these obstacles, thereby adversely affecting the long-term feasibility of the project. The Office of Public Counsel ("OPC") filed the prefiled testimony of William R. Jacobs, Ph.D., which, like the testimony of Dr. Cooper, concluded that FPL has not submitted an adequate feasibility analysis upon which the Commission could make an affirmative finding of feasibility. On August 10, 2009, FPL submitted extensive rebuttal testimony; however, this testimony did not address the deficiencies in FPL's previously submitted feasibility analysis and instead simply attacked Intervenors' witnesses.

Hearing on FPL's Petition was held during the week of September 7, 2009. For the reasons discussed in more detail herein, the record demonstrates that FPL has failed to submit to the Commission a detailed analysis demonstrating the long-term feasibility of completion of the Turkey Point 6 and 7 project, and therefore has not satisfied Rule 25-6.0423(5)(c)5. As a result, the Commission should disapprove FPL's feasibility analysis and deny FPL's requested cost recovery for estimated 2009 costs and projected 2010 costs,

as these costs cannot be found to be reasonable when the feasibility of completing the project has not been demonstrated.

B. PROGRESS ENERGY FLORIDA

On May 1, 2009, Progress Energy Florida ("PEF"), pursuant to Section 366.93, Fla. Stat., and Rule 25-6.0423, F.A.C., filed with the Commission a Petition for Approval of Nuclear Power Plant Cost Recovery. The Petition seeks recovery of costs (actual, estimated and projected) in the amount of \$446,316,907 relating to PEF's proposed Levy 1 & 2 nuclear reactors ("Levy Nuclear Project" or "LNP") and the Crystal River power uprate project.² The Petition further requests that the Commission make a finding that all of PEF's estimated 2009 costs and projected 2010 costs for the LNP are reasonable. PEF Petition, at 4.

Also on May 1, 2009, PEF filed the prefiled testimony of four (4) witnesses in support of its Petition for Cost Recovery. This included the prefiled testimony of Garry Miller, whose testimony purported to explain why the LNP was feasible pursuant to Rule 25-6.0423(5)(c)5. On July 15, 2009, SACE and other intervenors filed their prefiled testimony in this docket in response to PEF's prefiled testimony. SACE submitted the prefiled testimony of Dr. Mark Cooper and Arnold Gundersen. Dr. Cooper identified dramatically changed circumstances since the Determination of Need for the LNP was issued and concluded that as a result of these changed circumstances, PEF's Levy 1 and 2 are not feasible in the long term. He also pointed out the serious deficiencies in PEF's "feasibility analysis." Mr. Gundersen identified major scheduling, licensing and construction obstacles facing the LNP and concluded that the cost of the project would

² SACE takes no position on any issues relating to PEF's Crystal River power uprate project and will not address the uprate project herein.

increase as a result of these obstacles. OPC filed the prefiled testimony of William R. Jacobs, Ph.D., which, like the testimony of Dr. Cooper, expressed serious concern about the failure of PEF to submit any substantive feasibility analysis. PCS Phosphate filed the prefiled testimony of Peter Bradford, whose testimony also opined that PEF had failed to demonstrate that completion of the LNP was feasible in the long term. On August 10, 2009, PEF submitted extensive rebuttal testimony; however, similar to FPL, this testimony did not submit new information to address the lack of any feasibility analysis in its direct testimony and instead simply attacked Intervenor's witnesses.

Hearing on PEF's Petition was held during the week of September 7, 2009. For the reasons discussed in more detail herein, the record demonstrates that PEF has failed to submit to the Commission a detailed analysis demonstrating the long-term feasibility of completion of the LNP, and therefore has not met its burden to satisfy Rule 25-6.0423(5)(c)5. As a result, the Commission should disapprove PEF's feasibility analysis and deny PEF's requested cost recovery for estimated 2009 costs and projected 2010 costs, as these costs cannot be found to be reasonable when the feasibility of completing the project has not been demonstrated.

II. STATEMENT OF FACTS

A. FLORIDA POWER & LIGHT

1. General

In this docket, FPL seeks cost recovery for actual, estimated and projected costs relating to its proposed Turkey Point 6 & 7 nuclear reactors ("Turkey Point 6 & 7"). Turkey Point 6 & 7 would consist of two new nuclear reactors utilizing the Westinghouse AP-1000 reactor design. TR 128. FPL projects that the proposed reactors will add 2,200

MW to FPL's system, TR 445, and currently projects commercial operation dates for the proposed reactors of 2018 and 2020. TR 160. However, FPL witnesses Scroggs and Sim are both clear that FPL has not made the decision to build Turkey Point 6 & 7 at this point in time. TR 154; TR 192; TR 740.

If granted, FPL's cost recovery Petition would result in an average increase of \$.67 in FPL customers' monthly bills in 2010. TR 137. However, by 2011, this number would increase to \$3.60, and would further increase to \$7.87 by 2017. TR 137-138. If constructed and placed into commercial operation, Turkey Point 6 & 7 will more than double FPL's rate base, thereby further increasing rates and FPL's revenues. *See* Ex. 131; TR 136-137. In its May 1, 2009, submission FPL still relies on its 2007 nonbinding estimate of the total project cost of Turkey Point 6 & 7 which is a broad range of between \$12.1 billion and \$17.8 billion. TR 140. However, FPL does now concede that it believes the cost of Turkey Point 6 & 7 would now be in the high end of this range – somewhere between \$16 to \$18 billion dollars. TR 165.

2. Scheduling Delays

SACE witness Arnold Gundersen³ testified to the likelihood of further scheduling delays and resulting uncertainty in the licensing and construction of Turkey Point 6 & 7, and the effect of these delays on the long-term feasibility of Turkey Point 6 & 7. TR 503. Mr. Gundersen noted that no AP-1000 reactor has completed NRC review and the COLA

³ SACE notes that at hearing on this docket, FPL attempted to introduce exhibits into the Record regarding a past civil matter involving FPL in which Mr. Gundersen's expert testimony was excluded by a federal judge. An objection to the introduction of these exhibits was properly sustained by the Chair. There is no basis in the Florida Evidence Code to impeach a witness' credibility in this manner. However, to the extent that FPL intends to address this prior matter in its Post-Hearing brief to attack Mr. Gundersen's credibility in this case, the exclusion of his testimony in the prior matter was not based on his methodology but rather was based only on the facts of that case and certain assumptions that Mr. Gundersen was forced to rely upon because of FPL's destruction of critical documents and data and has no bearing on Mr. Gundersen's qualifications and credibility to present the testimony he presented in this case. FPL's attack on Mr. Gundersen's credibility in this manner should be accorded absolutely no weight by the Commission.

licensing process, and in fact the most recent design revision,⁴ which FPL intends to utilize at Turkey Point 6 & 7, has not even been approved yet. TR 524. Mr. Gundersen further testified that while the NRC Combined Operating License Application (“COLA”) process was supposed to streamline licensing procedures, the AP-1000 units have still suffered numerous setbacks. TR 505. Mr. Gundersen concluded that, while FPL purports to acknowledge these and other potential delays, its overly optimistic schedule has neglected to take these delays and resulting schedule slippages into account, and as a result FPL has failed to demonstrate the long-term feasibility of Turkey Point 6 & 7. TR 524.

As addressed by Mr. Gundersen, FPL’s original schedule for preparation and submittal of its COLA for Turkey Point 6 & 7 to the Nuclear Regulatory Commission (“NRC”) was based on an “aggressive” 15-month schedule, with a goal of submitting a COLA to NRC on March 30, 2009. TR 143. However, due to NRC’s concerns about site geology and hydrogeology, that schedule slipped three months and FPL did not submit its COLA to the NRC until June 30, 2009. TR 143-145. This licensing schedule is likely to continue to slip due to the fact that, to date, FPL has not been issued a review schedule for the Turkey Point 6 & 7 COLA by the NRC. TR 145. Also of note is the fact that FPL originally intended to enter into an EP contract in March of 2009; however, FPL now states that it will decide whether or not to enter into such a contract by the end of 2009. TR 151. Coupled with the three month schedule slippage discussed above, FPL’s original schedule has already slipped nine months. TR 151. Nevertheless, despite this nine month slippage, FPL has not changed its aggressive schedule for completing Turkey Point 6 & 7. TR 151-152.

⁴ In fact, in response to ongoing questions from the NRC about the AP-1000 design, Westinghouse has already submitted 17 amendments to its standard application. TR 505.

Additionally, the NRC review schedule for the AP-1000 design certification amendment has continued to slip, which will likely cause further scheduling delays for Turkey Point 6 & 7. On April 3, 2009, the NRC notified Westinghouse that it was extending the review schedule for the AP-1000 design certification amendment due to Westinghouse's "...past limited ability to make adequate design information available to the staff" See Staff Composite Ex. 2, pp. 405-410. On August 27, 2009, the NRC again notified Westinghouse that it had failed to adequately and timely provide requested information and that as a result the review schedule set on April 3, 2009, has been "further impacted." See Ex. 132; TR pp. 148-149. NRC Chairman Jaczko has stated in this regard:

At the heart of this change was that the key to success is having completed designs done early. But we are right back into a situation where we have incomplete designsThe Commission has made it clear, however, that if licensees chose not to follow the new Part 52 process of referencing an early site permit and a certified design in their applications, *they do so at their own risk.* (emphasis added).

See Ex. 66.

3. Long-Term Feasibility

Regarding the long-term economic feasibility of Turkey Point 6 & 7, SACE witness Dr. Mark Cooper testified that FPL's decision to proceed with Turkey Point 6 & 7 was based on important assumptions that have now been called into question due to dramatically changed circumstances since FPL was granted an affirmative determination of need for Turkey Point 6 & 7. TR 550. More specifically, Dr. Cooper testified that FPL used a low estimate of the cost of nuclear reactors, downplayed the contribution that efficiency and renewables can make to meet the need for electricity, assumed much higher prices for natural gas than are now projected, and assumed a much higher price for carbon

dioxide emissions for fossil plants than recent legislation in Congress would impose. TR 550-551. Furthermore, in regard to Rule 25-6.0423(5)(c)5, Dr. Cooper testified:

The rule adopted by the Commission requires an assessment of the long-term feasibility of the projects. I believe a thorough review of the projects is vital to protect the public interest. In a competitive marketplace firms must constantly review whether their investment decisions continue to be economically viable and justified in light of the changing market, technological, financial and regulatory conditions. For utility services that are offered under franchise monopoly conditions subject to regulatory oversight, the commission is charged with protecting the public from imprudent actions by the utility. It must ensure that utilities exercise the same vigilance with respect to the prudence of their actions as firms in a competitive market.

This regular review of the long-term feasibility of a project is particularly important in the case of nuclear reactors, which are, by their nature, extremely vulnerable to these four types of risk. As very large investments that take a long time to construct, and produce large quantities of electricity, they represent a huge quantity of inflexible, sunk costs. These investments are incapable of responding to change. They are inherently "go-no-go" decisions that should be made before costs are incurred. Because of their size and nature, the Commission needs to address the long-term feasibility of the projects before additional, substantial costs have been incurred.

TR 555.

FPL relies on a one-page Exhibit contained in the prefiled direct testimony of Steven R. Sim, which it terms a "feasibility analysis," in order to comply with the requirement of Rule 25-6.0423(5)(c)5. TR 296. However, as noted by Dr. Cooper, FPL uses a low, nonbinding cost estimate range of 12.1 to 17.8 billion in its feasibility analysis. TR 142. This estimate has not been updated since 2007 despite the fact that FPL's own analyses now show that the high-end of this estimate is more consistent with other AP-1000 projects. TR 139-141. In fact, FPL witness Scroggs now concedes that FPL believes that the cost of Turkey Point 6 & 7 would now be somewhere between 16 to 18 billion dollars. TR 165. Nevertheless, when conducting the feasibility analysis, FPL did not shift the range to reflect this fundamental change. TR 142. Dr. Cooper testified that:

FPL's cost estimate was derived from an early low estimate for a different type of reactor and its current estimates remain in the low range of projections. Each of FPL's estimates (low, middle and high) is in the bottom quarter of the comparable estimates.

TR 581. Similarly, in addressing FPL's failure to utilize updated costs in its feasibility analysis, OPC witness Jacobs testified that the analysis is of "little value" to this Commission in determining whether or not Turkey Point 6 & 7 are feasible in the long-term.

FPL has stated that the economics of Turkey Point 6 & 7 depend to a large extent on the likelihood that federal legislation will impose a cost on carbon dioxide emissions from fossil fuel powered electricity generation, either through a tax or a cap and trade program. TR 756. FPL's analysis of economic feasibility uses projected costs of carbon emissions that are outdated and are based upon bills that have never passed either house of Congress. TR 753. Moreover, as noted by Dr. Cooper, FPL's assumptions about the price of carbon are over 35% higher than what the Environmental Protection Agency has recently projected, based on the HR 2454 (Waxman-Markey) that passed the House of Representatives in June 2009. TR 565.

While using high, outdated projections of the cost of carbon emissions in its analysis, FPL has ignored the other important aspect of emerging federal policy that is part of HR 2454, a significant Renewable Portfolio Standard ("RPS"). The Senate's energy bill authored by Senator Bingaman that has been approved by one Senate Committee also contains an RPS.⁵ FPL's economic analysis does not incorporate the impact on demand and the mix of generating capacity that would be created by a federally mandated RPS, which would likely push any need for new nuclear reactors several years into the future.

⁵ S.1462, the American Clean Energy Leadership Act, was reported out of the Senate Energy and Natural Resources Committee in July 2009.

TR 589. FPL's failure to consider the increased contribution that renewables can make to meet the need for electricity is even more egregious when considered in light of the fact that FPL has publicly touted its positioning to take advantage of the RPS legislation that passed the House. *See* Ex. 137; TR 750.

Furthermore, FPL has significantly overestimated the price of natural gas in its analysis. TR 561. Put simply, the run-up of natural gas prices upon which FPL's projection is based is no longer where the market is heading. The natural gas "bubble" has burst, and it is far more likely that prices will increase much more slowly in the future. TR 597. This is extremely significant because it is the single most important factor in FPL's economic analysis, and thus has a huge impact on the economic "feasibility analysis" presented by FPL. TR 561.

Ultimately, FPL's feasibility analysis is simply based on an unrealistic set of assumptions. TR 591. Dr. Cooper testified:

These dramatic changes in the decision-making environment mean that the analysis presented by Florida Power & Light is centered on a set of assumptions that do not reflect the current or likely future reality in which the reactors would proceed to completion. If the economic analysis were centered on a more realistic set of assumptions, the preponderance of the outcomes would be negative and the logical conclusion would be that the project is not ...feasible.

TR 591.

Finally, while insufficiently addressing economic feasibility, the analysis completely fails to address other areas which should be addressed in the annual feasibility analysis, including technological feasibility and regulatory feasibility. TR 555; *See* Staff Composite Ex. 2, pp. 861-862.

B. PROGRESS ENERGY FLORIDA

1. General

In this docket, PEF seeks cost recovery for actual, estimated and projected costs relating to its proposed Levy 1 & 2 nuclear reactors ("Levy Nuclear Project" or "LNP"). The LNP would consist of two new nuclear reactors utilizing the Westinghouse AP-1000 reactor design. TR 1173. PEF projects that the proposed reactors will add 2,200 MW to PEF's system; however, PEF does not currently have expected commercial operation dates for the proposed reactors due to a schedule-shift resulting from the NRC's decision on PEF's Limited Work Authorization ("LWA") request. TR 1394. PEF, like FPL, has not made the final decision of whether or not to actually proceed with construction of the LNP, according to Miller, TR 1872, and Lyash. TR 2078.

If granted, PEF's cost recovery Petition would result in an average increase of \$13.46 in PEF customers' monthly bills in 2010. *See* Staff Composite Ex. 2, p. 680. By 2015, this number would increase to \$18.52, and would further increase to \$30.26 by 2018. *Id.* PEF still relies on its 2007 nonbinding capital cost estimate of \$17.2 billion for the LNP, despite the fact that the Commission ordered PEF to provide an updated estimate in this docket. TR 1405.

2. Scheduling Delays

SACE witness Arnold Gundersen testified to the likelihood of scheduling delays and resulting uncertainty in the licensing and construction of the LNP, and the effect of these delays on the long-term feasibility of the LNP. TR 1624. Mr. Gundersen noted that no AP-1000 reactor has completed NRC review and the COLA licensing process, much

less actually been constructed, and in fact the most recent design revision,⁶ which PEF intends to utilize at the LNP,⁷ has not even been approved yet. TR 1605; TR 1625. Mr. Gundersen also testified that while it was anticipated that the NRC COLA process was supposed to streamline licensing procedures, the AP-1000 units have still suffered numerous setbacks. *Id.* On a site specific basis, Mr. Gundersen stated that PEF was likely to have even more delay and uncertainty than FPL, not only because PEF is already facing the reality of an overly aggressive schedule, TR 1624, but also because of the fact that PEF withdrew its LWA request as part of its COLA due to NRC concerns with the geology of the proposed site. TR 1610. Mr. Gundersen stated:

Currently, it is uncertain whether these geological discoveries may negatively impact the viability of the Levy County site for operating *any* nuclear power plant. PEF has formally acknowledged that being unable to do work under its Limited Work Authorization has already delayed its start up schedule ... which implies inherent increases in cost, which costs have not yet been addressed in its application.

TR 1610-1611. It is noteworthy that the AP1000 design has not been approved for sites like the Levy site that are not considered "hard rock" sites. Design revision 16 for the AP-1000, which is still under review, addresses construction of the AP-1000 reactor on sites that are not considered "hard rock" sites. TR 1887-1888.

Of particular interest in regard to scheduling delays is the fact that in the approximate seven-week time period between the time Mr. Gundersen prepared his prefiled testimony and the hearing on PEF's Petition was held, his opinions on scheduling delay in regard to PEF were proven correct. TR 1624. On July 28, 2009, the NRC notified PEF

⁶ In fact, in response to ongoing questions from the NRC about the AP-1000 design, Westinghouse has already submitted 17 amendments to its standard application. TR 1605.

⁷ It is noteworthy that design revision 16 for the AP-1000, which is still under review, addresses construction of the AP-1000 reactor on sites that are not considered "hard rock" sites. TR 1887-1888. LNP is not considered a hard rock site. *Id.*

that its COLA would be delayed because of geotechnical concerns on the part of the NRC at the LNP site and revisions to the AP-1000 design certification and Vogtle reference COLA review schedules. *See* Ex. 69; TR 1624-1625. PEF admits that these developments will delay its NRC licensing process. TR 1880. Furthermore, on August 28th, 2009, the NRC notified all AP-1000 applicants that their COLAs would be delayed further because of the failure of Westinghouse to adequately and timely respond to NRC requests for information. *See* Ex. 132; TR 1625. PEF cannot predict how long these new delays will be or the extent to which they will affect its schedule. TR 1887.

3. Long-Term Feasibility

Regarding long-term feasibility of the LNP, SACE witness Dr. Mark Cooper first points out that PEF failed to provide any detailed analysis of the long-term feasibility of Levy 1 and 2 in its May 1, 2009, submission as required Rule 25-6.0423(5)(c)5. TR 1560. He further testified that PEF's decision to proceed with the LNP was based on important assumptions that have now been called into question due to dramatically changed circumstances since PEF was granted an affirmative determination of need for the LNP. TR 1555. Dr. Cooper testified that PEF used a low estimate of the cost of nuclear reactors, assumed a high rate of demand growth, downplayed the contribution that efficiency and renewables can make to meet the need for electricity, assumed much higher prices for natural gas than are now projected, and assumed a much higher price for carbon dioxide emissions for fossil plants than recent legislation in Congress would impose.. TR 1555-1556. Furthermore, in regard to Rule 25-6.0423(5)(c)5, Dr. Cooper testified:

The rule adopted by the Commission requires an assessment of the long-term feasibility of the projects. I believe a thorough review of the projects is vital to protect the public interest. In a competitive marketplace firms must

constantly review whether their investment decisions continue to be economically viable and justified in light of the changing market, technological, financial and regulatory conditions. For utility services that are offered under franchise monopoly conditions subject to regulatory oversight, the commission is charged with protecting the public from imprudent actions by the utility. It must ensure that utilities exercise the same vigilance with respect to the prudence of their actions as firms in a competitive market.

This regular review of the long-term feasibility of a project is particularly important in the case of nuclear reactors, which are, by their nature, extremely vulnerable to these four types of risk. As very large investments that take a long time to construct, and produce large quantities of electricity, they represent a huge quantity of inflexible, sunk costs. These investments are incapable of responding to change. They are inherently “go-no-go” decisions that should be made before costs are incurred. Because of their size and nature, the Commission needs to address the long-term feasibility of the projects before additional, substantial costs have been incurred.

TR 1560.

In sharp contrast to FPL, PEF believes that long-term feasibility should be analyzed on a qualitative, as opposed to a quantitative, basis. TR 862. PEF relies on the “qualitative analysis”⁸ contained in the direct prefiled testimony of Garry Miller filed on May 1st, 2009 to demonstrate long-term feasibility. TR 1402-1404. In his direct testimony, Mr. Miller states that feasibility, as that term is used in Rule 25-6.0423(5)(c)5, only involves technical and regulatory feasibility. TR 1889. Mr. Miller’s direct testimony contains no economic analysis whatsoever, and in fact contains absolutely no discussion of cost as it relates to feasibility of the LNP. TR 1170-1200.

Furthermore, according to PEF witness Miller’s testimony at the hearing on PEF’s Petition, *nothing* in the August 10, 2009 rebuttal testimony of PEF is intended to demonstrate the long-term feasibility of completion of the LNP. TR 1404-1405. Nevertheless, in the rebuttal testimony of Jeff Lyash, PEF included a cumulative present

⁸ As noted by SACE witness Dr. Cooper, Mr. Miller’s “qualitative analysis” presents no tangible evidence that PEF is conducting any real feasibility analysis, but rather simply shows that PEF is thinking about the relevant issues. TR 1558. This is not a demonstration of long-term feasibility.

value revenue requirement (“CPVRR”) analysis that was supposedly updated since its filing for the need determination. TR 2087. However, PEF is adamant that the CPVRR is not the proper type of economic analysis to determine feasibility. TR 1891; 2087; 2116. PEF witnesses also testified at the hearing on its Petition that PEF *now* believes that cost is a relevant factor to be considered in the feasibility analysis required under the Rule. PEF witness Miller testified that he believes “ ... it is relevant to consider costs when you consider feasibility.” TR 1894. PEF witness Lyash testified that total cost needs to be considered in the feasibility analysis, but only “qualitatively.” TR 2090. However, when asked if there is such a thing as a detailed qualitative analysis, Mr. Lyash responded that he didn’t know. TR 2135.

Like FPL, PEF’s CPVRR is flawed because it is based on outdated and unrealistic numbers. The CPVRR is based on an outdated and low estimated capital cost for the LNP left over from PEF’s LNP need determination. TR 1556. Furthermore, it is based on outdated and extremely high estimates of carbon emission costs. TR 2098. It also presents updated fuel forecasts which shows consistently lower gas prices than what was included in Mr. Miller’s prefiled testimony. TR 2104-2105. As was the case with FPL, this is extremely significant because the cost of gas is the most important factor in an economic analysis looking at the feasibility of constructing nuclear reactors. Also of note is that while FPL shows a reduction in summer peak in 2017 of 10%, PEF only shows a reduction of 2.6%. Ultimately, the CPVRR actually demonstrates that the LNP is not the least-cost alternative for the projected scenario of low natural gas prices and low environmental costs. TR 2120.

III. ARGUMENT

A. LONG-TERM FEASIBILITY

As part of its consideration of the nuclear cost recovery Petition of a utility, the Commission adopted Rule 25-6.0423(5)(c)5, which provides:

By May 1 of each year, along with the filings required by this paragraph, a utility shall submit for Commission review and approval a *detailed analysis* of the long-term feasibility of completing the power plant.

[Emphasis added]. The requirements embodied in this subsection are clear and explicit, and are not hollow requirements. A utility must, on an annual basis, submit to the Commission a detailed analysis which demonstrates the long-term feasibility of completion of a project, so that the Commission can make an affirmative finding as to long-term feasibility. Furthermore, because this subsection is part of the cost recovery mechanism under which utilities seek cost recovery, there must be consequences in the cost recovery mechanism for a utility who fails to comply with the requirements of this subsection. Logic and common sense dictate that if a utility fails to meet its burden of submitting a detailed analysis demonstrating long-term feasibility, then its estimated and projected costs (future costs) cannot be deemed reasonable under Rule 25-6.0423, F.A.C. It follows that when these estimated and projected costs are not reasonable, then the utility should not be permitted to recover these costs through the cost recovery rule.

The annual feasibility review is a vital tool for the Commission to protect Florida ratepayers and the public interest. This review forces utilities to regularly review whether their investment decisions continue to be justified in light of changing economic, technological, and regulatory conditions. This is especially true in the cost recovery context because the utilities are spending their ratepayers' money, with no real risk to their

own bottom lines. The Commission maintains an ongoing oversight role of the case for continuing to invest ratepayers' funds in the project through the feasibility analysis. Therefore, any detailed analysis which satisfies the mandate of the Rule to demonstrate ongoing feasibility must address the project in light of changing economic, technological, and regulatory conditions.

SACE believes that there are three components of feasibility: economic, technological, and regulatory, all of which must be included in the "detailed analysis" submitted by the utilities and evaluated by the Commission. The economic portion of the analysis should address the ongoing economic feasibility of the project, considered in the context of: updated and reliable estimates of total project cost and updated and reliable expected commercial operation dates; any and all potential delays or other uncertainties which could affect updated total project cost or commercial operation dates; updated fuel forecasts and prices; demand projections; load-growth projections; environmental forecasts; costs of alternative resources; and relevant financial conditions, including but not limited to the general financial environment and specific plant financing and any resulting financial risk.

The technological portion of the analysis should address the ongoing technological feasibility of the project, when considered in the context of: applicable technological issues, such as design and operational technologies; site-specific technological issues; renewable energy and efficiency/conservation technologies, including a demonstration that these technologies are being utilized to the extent they are available and that better utilization of these technologies would not obviate the need for the project; and issues relating to excess capacity.

The regulatory portion of the analysis should address the ongoing regulatory feasibility of the project, when considered in the context of: all state and/or federal regulatory/legislative policies that could potentially have an effect on the ongoing feasibility of the project; updated and reliable federal, state and local permitting schedules and corresponding construction schedules, taking into account any and all actual and/or potential delays or other uncertainties which could affect permitting or construction schedules; and the cost of environmental compliance.

Ultimately, at a minimum, in order to demonstrate long-term feasibility, a utility should have to demonstrate to the Commission that a project will be the least cost alternative of supplying needed power when the project is reasonably expected to come online. Pursuant to Fla. Stat. § 366.06, the Commission is charged with fixing fair, just and reasonable rates for Florida ratepayers, and only through such a detailed analysis as described above can the Commission do this in the cost recovery context.

B. THE COMMISSION SHOULD DISAPPROVE FPL'S LONG-TERM FEASIBILITY ANALYSIS FOR THE TURKEY POINT 6 & 7 REACTORS AND DENY COST RECOVERY FOR FPL'S 2009 ESTIMATED AND 2010 PROJECTED COSTS.

(Issues 8, 8A, 16, 17)

In this docket, the feasibility analysis prepared by FPL, which is contained in Exhibit SRS-5 of Steven R. Sim's prefiled direct testimony, is insufficient to demonstrate that the completion of Turkey Point 6 & 7 is feasible in the long-term. While FPL, in sharp contrast to PEF, did conduct an economic analysis, this analysis is severely flawed in several respects. Furthermore, FPL failed to submit any analysis relating to technological or regulatory feasibility. As a result, the Commission cannot make an affirmative finding as to long-term feasibility, and must disapprove FPL's feasibility analysis. Moreover, the

Commission should find that FPL's estimated 2009 costs and projected 2010 costs are not reasonable due to FPL's failure to demonstrate long-term feasibility, and should deny FPL's Petition for recovery of these costs.

As discussed above, FPL's economic feasibility analysis is based on important assumptions that have been demonstrated to be due to dramatically changed circumstances. As a result, FPL's economic analysis is deficient and does not demonstrate the long-term economic feasibility of completing Turkey Point 6 & 7. First, FPL based its analysis on an outdated and low cost estimate range for the total project cost of Turkey Point 6 & 7. This nonbinding cost estimate range of \$12.1 to \$17.8 billion was developed in 2007 during FPL's need proceeding before this Commission. More importantly, this range has now proven, by FPL's own admission, to no longer be accurate. FPL witness Scroggs testified that FPL now believes that the cost of Turkey Point 6 & 7 would be between \$16 and \$18 billion. However, when FPL conducted its economic feasibility analysis, it did not shift the range to reflect this fundamental change. FPL has also stated that it won't know a more accurate cost number for some time. Therefore, based on this omission alone, FPL's economic feasibility analysis should be disapproved by the Commission.

In addition to failing to use an updated and reliable capital cost estimate in its economic feasibility analysis, FPL also centered its economic analysis on a set of assumptions that do not reflect the current or likely future reality. FPL failed to consider the contribution that efficiency and renewables can make to meet the need for electricity, despite the fact that significant legislation, H.R. 2454 ("Waxman Markey"), which contains renewable portfolio standards and efficiency requirements, has passed the United States House of Representatives, and legislation has come out of committee in the Senate which

also contains a renewable portfolio standard. Moreover, while claiming to not consider these bills because they have not yet been signed into law, FPL does include in its analysis assumptions, which are 35% higher than what EPA currently projects, about the cost of carbon emissions that are based upon bills that never passed *either* house of Congress or any committee of Congress. FPL cannot have it both ways; in order to prepare a complete, detailed economic analysis, it must take all of these relevant considerations into account and present to the Commission an accurate economic picture. Finally, FPL has significantly overestimated the cost of natural gas in its analysis, which is perhaps the single most important factor in FPL's economic analysis. Of course, this is significant because the higher the cost of gas, the more attractive the nuclear option looks.

Finally, FPL has failed to submit any analysis to the Commission relating to technological and regulatory feasibility, which, as discussed hereinabove, are necessary pieces of any detailed feasibility analysis which satisfies Rule 25-6.0423(5)(c)5. Had it performed a proper technological feasibility analysis, it would have shown that there are serious problems and concerns with the AP-1000 design, as discussed by SACE witness Gundersen. It also would have shown that there are potential concerns about the hydrogeology of the Turkey Point 6 & 7 site, similar to those which are now causing PEF problems with its COLA and forcing it to shift its original schedule by 20 to 36 months. Furthermore, a proper regulatory analysis would have shown that FPL's schedule is overly aggressive and has already slipped by nine months, and that more schedule slippages are likely. These schedule shifts have a direct impact on the cost of Turkey Point 6 & 7.

FPL has not met the mandate of Rule 25-6.0423(5)(c)5, and therefore its feasibility analysis should be disapproved and its requested cost recovery for estimated 2009 costs and

projected 2010 costs should be denied. The Commission should not allow FPL to continue on a path of spending millions and potentially billions of its ratepayers' dollars when it has not demonstrated that completion of Turkey Point 6 & 7 is feasible in the long term. This is especially true when one considers that two FPL witnesses have testified that FPL has not made the decision to actually construct the Turkey Point 6 & 7 reactors, and as a result FPL ratepayers have no guarantee whatsoever of any return on their investment due to FPL's nuclear dalliance.

C. **THE COMMISSION SHOULD DISAPPROVE PEF'S LONG-TERM FEASIBILITY ANALYSIS FOR THE LEVY 1 & 2 REACTORS AND DENY COST RECOVERY FOR PEF'S 2009 ESTIMATED AND 2010 PROJECTED COSTS.**

(Issues 23, 23A, 30, 31)

As discussed *supra*, PEF takes a different view on long-term feasibility than that of FPL. However, like FPL, PEF's feasibility analysis provided in this docket is severely deficient and does even come remotely close to demonstrating that completion of the LNP is feasible in the long-term. Therefore, the Commission should disapprove PEF's feasibility analysis. Furthermore, the Commission should find that PEF's estimated 2009 and projected 2010 costs are not reasonable due to PEF's failure to demonstrate long-term feasibility, and deny PEF's Petition for recovery of these costs.

PEF takes the interesting position that long-term feasibility should be demonstrated by a qualitative, as opposed to quantitative, analysis.⁹ PEF relies on the qualitative analysis contained in the prefiled direct testimony of Garry Miller filed on May 1, 2009 as its demonstration of the long-term feasibility of completion of the LNP. Mr. Miller states in

⁹ PEF takes this position despite the fact that its former CEO, Jeff Lyash, testified that he did know if there was such a thing as a "detailed qualitative analysis."

his May 1 testimony that feasibility only involves technical and regulatory feasibility.¹⁰ However, Mr. Miller's testimony in this regard does nothing more than state that PEF is thinking about technological and regulatory issues as they continue to spend millions of PEF's ratepayers' dollars. It goes without saying that this mere discussion of technological and regulatory issues is not sufficient to meet PEF's burden to show technological and regulatory feasibility. As discussed *supra* in regards to FPL, accurate technological and regulatory analyses would have shown numerous problems with the licensing of the LNP due to problems with certification of the AP-1000 amendments, site conditions at the LNP as evidence by the NRC's refusal to allow PEF to proceed with its requested LWA, and that PEF's schedule was in fact extremely optimistic. Furthermore, Mr. Miller's direct testimony contains absolutely no economic analysis, and in fact contains no discussion of project cost as it relates to the feasibility of the LNP. Put simply, as noted by SACE witness Dr. Cooper and OPC witness Dr. Jacobs, the "analysis" in Mr. Miller's testimony does not demonstrate that completion of the LNP is feasible in the long-term, because, simply, there is no analysis.

Despite the fact that Mr. Miller testified that nothing in PEF's rebuttal testimony filed on August 10, 2009 is intended to demonstrate long-term feasibility, PEF did include in the rebuttal testimony of Jeff Lyash an updated cumulative present value revenue requirement ("CPVRR") analysis. However, both Mr. Miller and Mr. Lyash were adamant that this analysis was provided only because it was requested in discovery, and that PEF

¹⁰ Between the time Mr. Miller filed his May 1 testimony and the time he filed his rebuttal testimony, he drastically changed his position in this regard and now concedes that costs is a part of any feasibility analysis. However, PEF has submitted no cost analysis for the Commission to consider.

does not believe such an analysis is the proper way to demonstrate economic feasibility.¹¹ Therefore, the Commission should not give any weight to the CPVRR analysis submitted by PEF as part of its rebuttal testimony, as PEF explicitly disclaims its use as part of its feasibility analysis.

Even if the Commission does rely upon PEF's CPVRR analysis as part of its attempt to demonstrate economic feasibility, PEF's CPVRR analysis, like FPL's economic analysis, is inaccurate and unreliable because it is based upon assumptions that do not reflect current or likely future reality. The CPVRR is based on an outdated and low estimated capital cost for the LNP which is the nonbinding estimate left over from the LNP Need Determination. The CPVRR is also based on extremely high and obsolete estimates of carbon emission costs. Furthermore, the CVPRR shows consistently lower natural gas prices than what was included in Mr. Miller's prefiled testimony. As noted in the case of FPL, this is significant because the higher the cost of gas, the more attractive the nuclear option looks. Ultimately, the CPVRR results actually demonstrate that the Levy reactors are not the least cost alternative for the scenario of projected low natural gas prices and projected low environmental costs, both of which are higher than those projected by Dr. Cooper based on more current information.¹²

Ultimately, PEF has failed miserably to meet the requirements of Rule 25-6.0423(5)(c)5, and therefore the Commission should disapprove PEF's long-term

¹¹ PEF makes this argument because it believes the CPVRR is only a "snapshot" of a certain point of time, and the short-term changes in economic and other relevant conditions which it would reflect does not provide the Commission with an accurate picture of long-term projects such as the LNP. However, PEF's Need Determination was based upon a CPVRR, and this Need Determination decision was made based on long-term projections of need for power generation. Therefore, it is certainly not unreasonable to insist that utilities update CPVRR's on an annual basis to demonstrate ongoing feasibility of projects such as nuclear reactors.

¹² PEF criticizes Dr. Cooper's reliance on NYMEX futures to project natural gas prices, but PEF's own natural gas projections rely on NYMEX futures. See Ex. 156; TR 2123.

feasibility analysis. More troubling is the fact that PEF has seemingly taken the position that it does not have to perform any real feasibility analysis in order to receive cost recovery for the LNP from its ratepayers. PEF's qualitative discussion of vague future plans, with absolutely no economic analysis, simply does not meet the requirement of providing the Commission with a "detailed analysis." Therefore, the Commission should refuse to find PEF's estimated 2009 and projected 2010 costs reasonable and should further deny recovery of these costs. The Commission should not allow PEF to continue spending millions and potentially billions of its ratepayers' dollars when it has not demonstrated that completion of the LNP is feasible in the long-term. PEF, like FPL, has not made the decision of whether or not to actually construct the LNP, and in order to justify further cost recovery PEF must submit the detailed analysis required by Rule 25-6.0423(5)(c)5 before this Commission can award cost recovery and meet its statutory mandate to protect consumers.

D. CONCLUSION

For the reasons stated herein, SACE urges the Commission to, in order to protect Florida consumers:

1. Disapprove both FPL and PEF's long-term feasibility analyses submitted in this docket and find that FPL and PEF have failed to demonstrate the long-term feasibility of completion of these proposed reactors;
2. Enter a finding that both FPL and PEF's estimated 2009 and projected 2010 costs are not reasonable; and
3. Deny cost recovery for both FPL and PEF's estimated 2009 and projected 2010 costs for which recovery is sought in this docket.

Respectfully submitted this 18th day of September, 2009.

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