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BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Nuclear Plant Cost Recovery Clause	)	**DOCKET NO. 100009-EI**
	)	**FILED: September 10, 2010**
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	)	

POST-HEARING STATEMENT AND BRIEF OF THE SOUTHERN ALLIANCE FOR CLEAN ENERGY ("SACE")

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Pursuant to the Prehearing Order issued in this docket, Order No. PSC-10-0538-PHO-EI, the Southern Alliance for Clean Energy ("SACE") hereby submits its Post-Hearing Statement and Brief.

POST-HEARING STATEMENT

I. STATEMENT OF BASIC POSITION

Rule 25-6.0423, F.A.C. explicitly and unequivocally requires Florida Power & Light ("FPL") and Progress Energy Florida ("PEF") to submit for Commission review and approval a detailed analysis demonstrating the long-term feasibility of completing the project at issue, in this case, FPL's proposed Turkey Point 6 & 7 reactors and PEF's Levy Units 1 & 2 reactors ("projects" or "reactors"). The testimony of SACE expert witnesses Dr. Mark Cooper, and Mr. Arnold Gundersen, as well as testimony by witnesses for FPL and PEF, establishes that both FPL and PEF have failed to meet their burden to demonstrate the long-term feasibility of completing these projects. In fact, neither PEF nor FPL has demonstrated any real commitment to actually completing construction of the proposed reactors. Therefore, burdening ratepayers with additional costs for these proposed reactors would not be prudent or reasonable.

In the 2009 Nuclear Cost Recovery hearing (Docket 090009-EI), SACE witnesses Dr. Mark Cooper and Mr. Arnold Gundersen alerted the Commission to the great uncertainty and risk surrounding the long-term feasibility of completion of the proposed reactors at issue in this docket. Cooper and Gundersen warned the Commission that this uncertainty and risk would result in significant scheduling delays for the proposed reactors and significant increases in the total cost of the proposed reactors. PEF and FPL refused to acknowledge this uncertainty and risk and its resulting adverse impacts during the second hearing. However, the positions of the utilities in 2010 clearly demonstrate that Dr. Cooper and Mr. Gundersen were absolutely correct.

As a result of the utilities' failure to acknowledge what was already apparent in 2009, PEF and FPL ratepayers are on the hook for hundreds of millions of dollars spent on reactors which likely will never be constructed.

Now, in 2010 both PEF and FPL have belatedly acknowledged the great uncertainty and risk surrounding the feasibility of completing these new nuclear reactors in the foreseeable future. As predicted by SACE, this belated admission on the part of PEF and FPL has resulted in significant scheduling delays for all four proposed reactors and corresponding massive cost increases. Therefore, PEF and FPL have both resorted to a strategy of "line sitting" by which the utilities have delayed major capital expenditures until possible receipt of a Combined Operating Licenses ("COL") from the Nuclear Regulatory Commission ("NRC"). However, given all of the uncertainty and risk surrounding new nuclear generation in this country and in the State of Florida, neither PEF nor FPL has demonstrated that completion of these reactors is feasible in the long-term, and furthermore neither utility has demonstrated any real commitment to actually construct these proposed reactors. Apparently, both PEF and FPL have recognized, like most other utilities in the United States, that attempting to build new nuclear reactors given current economic conditions is simply not reasonable, prudent, or feasible.

It is the responsibility of the Commission to fix "fair, just and reasonable" rates for Florida ratepayers. Fla. Stat. § 366.06. In this docket, because FPL and PEF have failed to demonstrate the long-term feasibility of completing these projects, the utilities have as a result failed to demonstrate that the costs for which they seek recovery for 2010 and 2011 are reasonable and/or prudent. As a result, the Commission should deny both FPL and PEF's requested cost recovery for 2010 and 2011, as is it would be imprudent and unreasonable for the Commission to allow the utilities to incur further expenses for these proposed reactors, or to

recover those expenses from Florida ratepayers, until PEF and FPL themselves demonstrate that completion of the reactors is feasible. Put simply, PEF and FPL ratepayers should not have to pay for the utilities to preserve an option to construct these proposed reactors when completion of the reactors is not feasible in the long-term and the utilities themselves have demonstrated no real commitment to actually constructing the reactors.

II. STATEMENT OF ISSUES AND POSITIONS

Progress Energy Florida

ISSUE 2: Do PEF's activities 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.?

SACE Position: ***No. PEF's own testimony in this docket related to Levy Units 1 & 2 clearly indicates that PEF is no longer actively pursuing the "siting, design, licensing, *and* construction" of a nuclear power plant. Rather, PEF is, by its own admission, merely engaged in an attempt at "licensing" a nuclear power plant. This pursuit of a COL alone, with no demonstrated commitment to actually construct the LNP, does not meet the letter and intent of the statute.***

ISSUE 3A: Does the Commission have the authority to require a "risk sharing" mechanism that would provide an incentive for a utility to complete a project within an appropriate, established cost threshold? If so, what action, if any, should the Commission take?

SACE Position: ***Yes. The Commission does have such authority in order fulfill its obligation to determine and fix "fair, just and reasonable" rates for Florida ratepayers. Fla. Stat. § 366.06. The Commission also has broad authority under the rule and statute to protect customers from imprudent expenditures.**

The Commission should develop a "risk-sharing" mechanism which would provide a strong incentive to utilities to control costs by shifting some of the risk of these projects from the ratepayers to the utilities.*

ISSUE 4: Should the Commission find that for the year 2009, PEF's accounting and costs oversight controls were reasonable and prudent for the Levy Units 1 & 2 project and the Crystal River Unit 3 Uprate project?

SACE Position: ***Agree with OPC.***

ISSUE 5: Should the Commission find that for the year 2009, PEF's project management, contracting, and oversight controls were reasonable and prudent for the Levy Units 1 & 2 project and the Crystal River Unit 3 Uprate project?

SACE Position: ***Agree with OPC.***

ISSUE 6: Should the Commission approve what PEF has submitted as its 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?

SACE Position: *** No. PEF has failed to complete a realistic feasibility assessment that properly takes into account important changes in key variables which have adversely affected the long-term feasibility of the LNP, including but not limited to: declining natural gas costs, declining estimates of the cost of carbon; declining demand; ongoing schedule delays; increased total project costs; and the true impacts of efficiency and renewables.**

As a result, the Commission should deny cost recovery for PEF's 2010 and 2011 costs.*

ISSUE 7: Is PEF's decision to continue pursuing a Combined Operating License from the Nuclear Regulatory Commission for Levy Units 1 & 2 reasonable? If not, what action, if any, should the Commission take?

SACE Position: *** No. It is unreasonable for PEF to continue to incur additional costs on the licensing of the proposed Levy Units 1 & 2, and pass these costs on to ratepayers, with no demonstrated commitment to actually construct the proposed reactors and with no demonstration of the long-term feasibility of completing the reactors.**

As a result, the Commission should deny cost recovery for PEF's 2010 and 2011 costs as these costs are not being reasonably incurred.*

ISSUE 8: Should the Commission approve what PEF has submitted as its 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?

SACE Position: ***Agree with OPC.***

ISSUE 9: What system and jurisdictional amounts should the Commission approve as PEF's final 2009 prudently incurred costs and final true-up amounts for the Crystal River Unit 3 Uprate project?

SACE Position: ***Agree with OPC.***

ISSUE 10: What system and jurisdictional amounts should the Commission approve as PEF's reasonably estimated 2010 costs and estimated true-up amounts for the Crystal River Unit 3 Uprate project?

SACE Position: ***No position.***

ISSUE 11: What system and jurisdictional amounts should the Commission approve as PEF's reasonably projected 2011 costs for the Crystal River Unit 3 Uprate project?

SACE Position: ***No position.***

ISSUE 12: What system and jurisdictional amounts should the Commission approve as PEF's final 2009 prudently incurred costs and final true-up amounts for the Levy Units 1 & 2 project?

SACE Position: ***Agree with OPC.***

ISSUE 13: What system and jurisdictional amounts should the Commission approve as reasonably estimated 2010 costs and estimated true-up amounts for PEF's Levy Units 1 & 2 project?

SACE Position: ***None. PEF has not demonstrated that completion of the Levy Units 1 & 2 is feasible in the long-term as required by Rule 25-6.0423(5)(c)5, F.A.C., therefore no such costs could be reasonably estimated and/or incurred.***

ISSUE 14: What system and jurisdictional amounts should the Commission approve as reasonably projected 2011 costs for PEF's Levy Units 1 & 2 project?

SACE Position: ***None. PEF has not demonstrated that completion of the Levy Units 1 & 2 is feasible in the long-term as required by Rule 25-6.0423(5)(c)5, F.A.C., therefore no such costs could be reasonably estimated and/or incurred.***

ISSUE 15: What is the total jurisdictional amount to be included in establishing PEF's 2011 Capacity Cost Recovery Clause factor?

SACE Position: ***Agree with OPC.***

Florida Power & Light

ISSUE 3A: Does the Commission have the authority to require a "risk sharing" mechanism that would provide an incentive for a utility to complete a project within an appropriate, established cost threshold? If so, what action, if any, should the Commission take?

SACE Position: * **Yes. The Commission does have such authority in order fulfill its obligation to fix "fair, just and reasonable" rates for Florida ratepayers. Fla. Stat. § 366.06. The Commission also has broad authority under the rule and statute to protect customers from imprudent expenditures.**

The Commission should develop a "risk-sharing" mechanism which would provide a strong incentive to utilities to control costs by shifting some of the risk of these projects from the ratepayers to the utilities.*

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Nuclear Plant Cost Recovery Clause	)	**DOCKET NO. 100009-EI**
	)	**FILED: September 10, 2010**

POST-HEARING BRIEF OF THE SOUTHERN ALLIANCE FOR CLEAN ENERGY ("SACE")

I. INTRODUCTION

As it did in Docket 090009-EI, the Southern Alliance for Clean Energy ("SACE") has in this docket presented strong expert testimony demonstrating that PEF has failed to take the requirement to demonstrate the long-term feasibility of completing its proposed Levy Nuclear Project ("LNP") seriously. In fact, the 2009 testimony of SACE witnesses Dr. Mark Cooper ("Cooper") and Arnold Gundersen ("Gundersen") has proven to be highly accurate in predicting that the great uncertainty and risk surrounding the feasibility of pursuing the LNP would inevitably lead to significant scheduling delays for the LNP and a corresponding massive cost increase for the LNP. PEF has been forced to push out the projected in-service dates of the LNP from 2016/2017 to 2021/2022, and the projected cost of the LNP has increased from $17.2 billion to $22.5 billion. That's a minimum five year delay, and a minimum five billion dollar cost increase. Unfortunately for PEF ratepayers, Cooper and Gundersen predict more delay in the LNP schedule and more increase in the total cost of the LNP. The Commission is charged to, and must, protect the ratepayers by denying future (2010 estimated and 2011 projected) costs.

While PEF has in this docket belatedly admitted the uncertainty and risk identified by Cooper and Gundersen in 2009, this belated recognition has forced PEF to defer all significant capital investment in the LNP until after possible receipt of a COL from the NRC, which is not

expected until late 2012 at the earliest. Thus, PEF is in reality asking its ratepayers to pay to preserve PEF's option to construct the LNP, even though PEF has shown no real commitment to construct the LNP. Ultimately, since the 2007 Determination of Need was issued by this Commission for the LNP, conditions have changed dramatically and clearly demonstrate that the completion of the LNP is simply not feasible in the long-term. Moreover, it is obvious under the circumstances that PEF would never bet its own money on the long-term feasibility of these projects. Therefore, the Commission should not allow PEF to continue to bet its ratepayers' money.

In their testimony this year, SACE witnesses Cooper and Gundersen have demonstrated that this strategy on the part of PEF of delaying possible construction while continuing to attempt to obtain a COL for the LNP site ("line sitting") is unreasonable and imprudent in that it provides no concrete benefits to PEF's ratepayers while simultaneously imposing all the project risk on the ratepayers. By PEF's own admission, if the LNP is never constructed, there will be no benefit to the ratepayers. It follows that the costs which are being and will continue to be incurred by PEF in 2010 and 2011 to engage in this line sitting are unreasonable, and recovery of these costs should be denied by the Commission. Furthermore, Cooper and Gundersen have demonstrated that the uncertainty and risk that they testified to last year have only increased in the interim, and that as a result more delays and cost increases are likely. Ultimately, Cooper and Gundersen show that if realistic assumptions are made about the key parameters that affect the feasibility of new nuclear generation, the long-term feasibility of completion of the LNP cannot be demonstrated.

In this Brief, SACE will address the following deficiencies in PEF's 2010 request for cost recovery: (1) PEF's failure to demonstrate that completion of the LNP is feasible in the long-

term; (2) the unreasonableness of PEF's decision to continue pursuit of a COL from the NRC for the LNP given the great uncertainty and risk surrounding new nuclear generation; (3) the fact that PEF failed to provide up-to-date, accurate information to the Commission in the 2009 NCRC docket, Docket 090009-EI; and (4) that PEF's activities relating to the LNP do not quality for cost recovery under Section 366.93, F.S., because PEF is not, by its own admission, engaged in the process of constructing the LNP. While any of these deficiencies alone should preclude PEF from recovering its estimated 2010 costs and projected 2011 costs, the totality of these deficiencies leaves the Commission no choice but to deny these costs. Furthermore, SACE will address the need for the Commission to develop a risk sharing mechanism that would provide an incentive for PEF and other utilities to complete projects within an appropriate cost threshold established by the Commission, and in so doing to shift some of the risk of these projects to the utilities.

II. STATEMENT OF FACTS

A. PROGRESS ENERGY FLORIDA

1. General

On April 30, 2010, 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 approximately $164 million relating to PEF's proposed LNP and the Crystal River power uprate project.[1] PEF Petition, at 1. The LNP costs going forward are primarily for the COLA which PEF has requested from the NRC. PEF Petition, at 37.

[1] SACE agrees with and adopts the positions(s) of OPC and other intervenors in regard to PEF's Crystal River power uprate project. SACE will not brief uprate related issues herein.

Also on April 30, 20010, PEF filed the prefiled testimony of seven witnesses in support of its Petition for Cost Recovery. This included the prefiled testimony of Mr. Jeff Lyash, whose testimony purported to demonstrate why completion of the LNP remains feasible pursuant to Rule 25-6.0423(5)(c)5. This also included the prefiled testimony of Mr. John Elnitsky, who testified as to PEF's decision-making process in choosing to proceed with the LNP in the face of increasing risk to the completion of the project.

On July 8, 2010, 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 Mr. Arnold Gundersen. Dr. Cooper noted that while PEF had belatedly acknowledged the great uncertainty and risk surrounding the feasibility of the construction of new nuclear generation (which PEF terms "enterprise risk"), PEF still refuses to acknowledge the real effect of this uncertainty. TR 635, 640. Dr. Cooper further noted that PEF's decision to continue its attempt at licensing the LNP, with no demonstrated commitment to actually constructing the LNP, was not a reasonable and prudent decision and that the costs related thereto should not be recovered from PEF ratepayers. Mr. Gundersen demonstrated that his testimony in Docket 090009-EI was highly accurate in predicting the scheduling delays and cost increases which have plagued the LNP over the past year. TR 677. Furthermore, Mr. Gundersen predicted more scheduling delays and costs increases for the LNP, TR 691, and, like Dr. Cooper, testified that PEF's 2010 decision to continue pursuit of a COL for the LNP was unreasonable and imprudent. TR 683. Ultimately, both Dr. Cooper and Mr. Gundersen have demonstrated that PEF has failed to conduct a realistic analysis of long-term feasibility of the LNP. TR 637, 680.

Hearing on PEF's Petition was held during the week of August 23, 2010. Testimony at the hearing also demonstrates that PEF has failed 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. Moreover, the record demonstrates that PEF's decision to continue pursuit of a COL in the face of all the uncertainty and risk facing the LNP, with no real commitment to actually constructing the LNP, was unreasonable.

2. Delays and Cost Increases

The projected costs of the LNP have risen from $17.2 billion in the 2007 Need Determination and 2009 Nuclear Cost Recovery proceeding to at least $22.5 billion in 2010.[2] At $22.5 billion, the LNP would triple the PEF rate base upon which the utility bases its return on equity. Trans. 1197-98. The costs of the Levy Nuclear Plant would boost residential electric rates by more than $40 per 1000 kWhr before one kWhr of electricity is generated by the plant. Ex. 188.

As predicted by SACE witness Arnold Gundersen in his testimony in Docket 090009-EI, the LNP has suffered significant scheduling delays and corresponding total project cost increases since last year's NCRC docket. More specifically, PEF has been forced to push out the projected in-service dates of the LNP five years from 2016/2017 to 2021/2022. TR 679, 680. Furthermore, Mr. Gundersen has predicted additional scheduling delays (and corresponding cost increases) for the LNP due to ongoing, unresolved issues with the AP1000 design that PEF intends to utilize for the LNP, as well as site specific concerns. TR 687, 693. Perhaps most

[2] The $22.5 billion cost estimate is the middle of PEF's cost estimate range. This number is based on PEF's April 2, 2010, Integrated Project Plan mid-range cost estimate of $17.6 billion without AFUDC. Conf. Ex. 217. Therefore, AFUDC adds $4.9 billion to the costs. Although PEF has not presented the upper end of the range with the addition of AFUDC, the cost number without AFUDC is about $20 billion. Trans. 938-40. Therefore the upper range cost estimate with AFUDC would likely exceed $25 billion.

telling is the fact that PEF admits that the current five year delay in the projected in-service dates of the LNP could in fact be longer than five years. Ex. 239, at 46.

3. Long-Term Feasibility

As set forth in the prefiled testimony of Mr. Jeff Lyash in this docket, PEF now believes that there are three aspects to the feasibility analysis required by Rule 25-6.0423(5)(c)5 – technical, regulatory, and economic feasibility. TR 1071. PEF relies on Mr. Lyash's narrative testimony to demonstrate technical and regulatory feasibility, TR 1072, 1073, and provides an updated CPVRR in an attempt to demonstrate economic feasibility. Ex. 27.

PEF's long-term feasibility analysis is flawed for a number of reasons. In regards to technical feasibility, PEF asserts that completion of the LNP is technically feasible if the AP1000 reactor design can be successfully installed at the Levy site. TR1072. However, as demonstrated by SACE witness Gundersen, there are still numerous unresolved issues with the viability of the AP1000 design, and ultimate approval of the design is far from given. TR 687-689. Moreover, there are site specific concerns with the Levy site, *i.e.*, concerns as to whether or not the LNP can even be constructed at the site. TR 691-694. In regard to regulatory feasibility, PEF witness Lyash has testified that PEF believes the AP1000 design will be finalized (although on a much longer schedule than originally anticipated) and that the LNP will be issued a COL by the NRC. However, as noted above, SACE witness Gundersen has demonstrated that there are still numerous unresolved issues with the viability of the AP1000 design, and that geologic concerns, amongst other reasons, could prevent the issuance of a COL for the LNP site. TR 687-694.

Finally, in regard to economic feasibility, PEF's CPVRR is flawed, like it was last year, because it is based on unrealistic numbers and assumptions. As he did in his testimony in Docket

090009-EI, Dr. Mark Cooper has shown that PEF's long-term feasibility analysis is unrealistic in that it, amongst other problems, continues to utilize erroneous assumptions. Dr. Cooper testified:

> These erroneous assumptions lead them to erroneously conclude that nuclear power will be needed in the mid-term and will be less expensive than meeting demand with combined-cycle gas plants. These erroneous assumptions in the 2010 analyses include, but are not limited to, the following:
>
> - The cost of natural gas used in the analyses is still higher than projections by the U.S. Department of Energy Information Administration ("EIA").
> - The cost of carbon is still higher than the U.S. Environmental Protection Agency projects from the energy bill that has passed one house of Congress.
> - The utilities have also failed to take the full implications of climate change policy into account. Both FPL and PEF assume a price of carbon is going to be imposed, but at the same time ignore the efficiency and renewable mandates that are likely to be included in any climate change legislation. As a result, they propose to build new reactors well before there will be a need for them to meet system reserve margin requirements if climate change policy is enacted.
> - Their electricity and financial models do not reflect the problem of excess capacity and the value of being able to add natural gas generation resources in smaller increments and with shorter lead times than large central station facilities like nuclear reactors.

TR 646-647. Moreover, the CPVRR is flawed because it is: (1) based on a low estimated capital cost for the LNP; (2) fails to recognize the full implication of lowered demand; (3) fails to fully take into account the contribution of efficiency and renewable; (4) assumes high prices of natural gas which are not in accordance with reality; and (5) assumes a high cost of carbon. TR 637-638.

III. ARGUMENT

A. THE COMMISSION SHOULD DISAPPROVE PEF'S LONG-TERM FEASIBILITY ANALYSIS FOR THE LEVY 1 & 2 REACTORS AND DENY COST RECOVERY FOR PEF'S 2010 ESTIMATEDAND 2011 PROJECTED COSTS.

(Issues 6, 13, 14)

1. Requirement to Demonstrate 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 that 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. *See* Order No. PSC-09-0024-FOF-EI (holding that it is "well established" that the burden of proof lies with a utility who is seeking a rate change). 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 borne by the ratepayers continue to be justified in light of changing economic, technological, and regulatory conditions. This review is part of the *quid pro quo* for the extraordinary financial incentive provided to the utility through the cost recovery clause,

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 accomplish its statutory mandate in the cost recovery context.

2. PEF Has Failed to Demonstrate That Completion of the LNP is Feasible in the Long-Term.

As discussed *supra,* PEF's feasibility analysis provided in this docket is deficient for several reasons and does not meet PEF's burden to demonstrate that completion of the LNP is feasible in the long-term. Therefore, the Commission should disapprove PEF's feasibility analysis.

As evidenced by its testimony filed in this docket, PEF now agrees with SACE and believes that a showing of long-term feasibility requires a showing of technical, regulatory, and economic feasibility. However, in regards to technical and regulatory feasibility, PEF relies on two pages of the prefiled direct testimony of Jeff Lyash which contains nothing more than mere conjecture about the technical and regulatory feasibility of the LNP. TR 1072-1073. These two pages of testimony simply do not constitute the "detailed analysis" that is contemplated by the Rule. Moreover, as discussed by SACE witness Gundersen, there are still multiple unresolved

issues with the generic AP1000 design, and ultimate approval of the generic design is far from a certainty. TR 687-689. More specifically, Mr. Gundersen testified:

> Q. On a national level, does the potential exist for further licensing delays on the generic AP1000 design due to unresolved issues with the design?
> A. Yes, there are several unresolved technical issues regarding the AP1000 design that are currently being assessed by the NRC and which are likely to further delay licensing approval(s). In October of 2009 the NRC sent a letter to Westinghouse requiring it to provide more detailed information regarding the AP-1000 shield building. During the past year, the NRC has asked a series of probing questions relating to the structural integrity of the AP1000 shield building ....
> Q. Are there other unresolved issues with the generic AP1000 design that could further delay the potential licensing of the LNP?
> A. Yes. In addition to problems with the shield building, the NRC is also reviewing a potential and significant safety problem with the AP1000 containment itself.

TR 687, 689. Besides these unresolved issues with the AP1000 shield building and containment, there are also still unresolved site-specific concerns with respect to the Levy site. TR 691-694. Ultimately, Mr. Lyash's testimony in regard to regulatory and technical feasibility is extremely lacking and should not be accepted by the Commission as meeting PEF's burden.

In regards to economic feasibility, PEF has submitted an "updated" CPVRR to the Commission which purports to show the continued economic feasibility of the LNP. However, the testimony of SACE witness Dr. Mark Cooper demonstrates that PEF's CPVRR is flawed because it is based on unrealistic assumptions that do not reflect current or likely future reality. More specifically, PEF's CPVRR is flawed because it: (1) is based on unrealistically high projected costs of natural gas which make the LNP look more attractive; (2) uses a cost of carbon that is higher than that projected by the United States Environmental Protection Agency; (3) fails to take into account the full implications of climate change policy; (4) fails to reflect the problem of excess capacity and the value of being able to add natural gas generation resources in smaller increments with shorter lead times that nuclear reactors; (5) utilized demand projections not in accord with reality; (6) downplays the contribution of efficiency and renewable; and (7)

utilizes a low estimate of the cost of the LNP. TR 637-639, 647.[3] Dr. Cooper concluded in his testimony:

> As I predicted in Docket 090009-EI, dramatically changed circumstances surrounding the licensing and construction of new nuclear reactors has forced PEF and FPL to push the possible construction of these proposed nuclear reactors off into the future beyond the time horizon of the ten-year planning process and even the extremely long lead time that they originally claimed was needed to construct new reactors. Nevertheless, despite even more uncertainty at this point in time, both PEF and FPL want to continue to spend ratepayer funds in the near term, even though those expenditures would provide little benefit to ratepayers. Put simply, the near term expenditure of funds to allow PEF and FPL to sit in line at the NRC is not only unnecessary, but also unreasonable and imprudent. Ultimately, neither PEF nor FPL can demonstrate the long-term feasibility of these proposed nuclear reactors if realistic assumptions are made about future demand and the cost of various alternatives as I have discussed above.

TR 670.

Ultimately, PEF has failed to meet its burden to provide the Commission with a detailed analysis demonstrating the long-term feasibility of completion of the LNP as required by Rule 25-6.0423(5)(c)5. PEF's technical and regulatory analyses are extremely lacking, and its economic analysis is based on any number of unrealistic assumptions which make the LNP look more attractive than it is in reality. It is important to note that PEF has the burden of demonstrating long-term feasibility – it is not the burden of SACE to provide alternative analyses. Rather, all that SACE is required to do is alert the Commission to the shortcomings in PEF's analyses, which SACE has done with competent and substantial evidence in this docket. As a result of these shortcomings in PEF's long-term feasibility analysis, the Commission should disapprove the analysis and should refuse to find PEF's estimated 2010 and projected 2011 costs reasonable.

[3] In addition to the criticisms of the PEF CPVRR by Dr. Cooper, PEF admitted that the general escalation rate changed from 3% in the 2009 CPVRR to 2% in the 2010 CPVRR. Trans. 1198-99.

B. THE COMMISSION SHOULD FIND THAT IT WAS UNREASONABLE FOR PEF TO CONTINUE PURSUIT OF A COMBINED OPERATING LICENSE FROM THE NUCLEAR REGULATORY COMMISSION FOR THE LNP AND DENY COST RECOVERY FOR PEF'S 2010 ESTIMATEDAND 2011 PROJECTED COSTS.

(Issues 7, 13, 14)

Throughout 2009 and continuing into 2010, PEF was faced with increasing "enterprise risks" which were adversely affecting the feasibility of its continued pursuit of the LNP. TR 1039-1040. Therefore, PEF developed three alternative options for the LNP: full speed project continuation; project cancellation; and project continuation with focus on COL activities. *See, e.g.*, TR 806. Despite the increasing enterprise risks, and the fact that this option was not the cheapest option for its ratepayers, PEF made the decision to go with "Option 3," or project continuation with focus on COL activities. TR 808. This decision had the effect of deferring all significant capital investment in, and most work on, the LNP until after possible receipt of a COL from the NRC, which is not expected until late 2012 at the earliest. Ex. 239, at 29. Thus, in effect, PEF made the decision to attempt to preserve the option to construct the LNP following possible receipt of a COL, with no commitment to its ratepayers, who are paying for the preservation of this option, to actually construct the LNP. As demonstrated by the testimony of SACE witnesses Cooper and Gundersen, and other witnesses in this docket, this decision was unreasonable.

SACE witnesses Cooper and Gundersen refer to this strategy of PEF as "line sitting" or "site banking." It is unreasonable for PEF to continue to incur additional costs for the licensing of LNP, and pass these costs on to its ratepayers, without any sort of commitment to construct the LNP in the future. As stated by SACE witness Gundersen:

> When PEF and FPL announced plans for the AP1000 reactors, it appeared that their goal was to actually construct and operate these proposed nuclear power

> plants....This year, due to both PEF and FPL's belated recognition of all the uncertainties inherent in the licensing and construction of these proposed reactors, PEF and FPL have changed their strategies and now seem entirely focused upon funding only the necessary NRC requirements for obtaining a COL without any real demonstrated commitment to actually constructing these proposed reactors....If the NRC does in fact grant a COL to either PEF or FPL for the LNP or TP 6 & 7, each utility will then decide whether or not it benefits their respective bottom lines to actually construct these proposed new reactors. This possibility will once again leave Florida ratepayers and businesses bearing the unreasonably and imprudently incurred up-front financial burden of these unrealistic projects that may never produce electricity.

TR 681-682. Similarly, SACE witness Cooper testified:

> ... that spending hundreds of millions of dollars of ratepayer funds today so that PEF and FPL can continue to sit in the line waiting to build new nuclear reactors is imprudent, unreasonable, and wasteful. In fact, the imprudence of continuing to spend ratepayer money on these projects is symbolized by the fact that the generation resources that these projects would bring on line would not even appear in the utility's ten year site plan for another two years, if then.

TR 648.

Ultimately, as admitted by PEF in this docket, there is simply no benefit to PEF's ratepayers in paying advanced cost recovery for the licensing of the LNP if the option to construct the LNP is never exercised by PEF. Ex. 329, at 40. In fact, it would be one and one-half times more expensive for PEF to cancel after receipt of the COL, as compared to cancelling now. TR 1012-1013. Thus, by its own admission, PEF has chosen a course of action which will, if the 2010 and 2011 requested cost recovery is granted, force its ratepayers to pay millions of dollars so that PEF can decide whether or not it is beneficial to the company to construct the LNP at some point in the future. This is nothing more than a waste of ratepayers' hard earned money, and the Commission should deny PEF's requested recovery of estimated 2010 costs and projected 2011 costs.

C. PEF FAILED TO PROVIDE UP-TO-DATE, ACCURATE INFORMATION TO THE COMMISSION IN THE 2009 NCRC DOCKET.

An important issue that has become a central focus of the 2010 NCRC docket is the failure of the utilities to provide up-to-date, accurate information to the Commission prior to its decisions approving cost recovery in the 2009 docket. Although FPL has been in the spotlight for this issue, PEF also failed to provide the Commission up-to-date information that could have impacted the Commission's decision in 2009. The record demonstrates that PEF: (1) knew prior to the hearing on September 8, 2009, that its schedule shift for LNP was at least 20-36 months, not 20 months; (2) knew prior to the hearing that the costs of LNP would increase significantly as a result of the longer schedule shift; (3) had recommended internally an even longer schedule shift than 36 months prior to the PSC's Agenda Conference on October 16, 2009; and (4) had analyzed and evaluated prior to October 16, 2009, the financial impacts of this longer schedule shift that became the 60-month schedule shift revealed to the PSC and the public on April 30, 2010.

During the September 2009 PEF portion of the NCRC hearing, however, PEF primarily relied on prefiled direct testimony that stated:

> Although the overall schedule impact is not certain at this time, PEF expects the schedule to shift at least 20 months. Any impact on the total LNP cost is also uncertain at this time.

2009 TR 1136. On cross examination Mr. Garry Miller resisted providing any further information about schedule and costs. He stated, "We have not established the new dates for the in-service date." 2009 TR 1394. As to the updated cost, Mr. Miller testified as follows:

> Q. And the cost of the project as we have discussed a number of times is currently unknown, is that right?

A. The cost of the project is being revised; however, we have insight to what it will be revised to.
Q. Okay. Is your insight to what it will be revised to appear anywhere in the testimony filed in this docket?
A. No, because that information is after this May 1st filing. [Emphasis added].

2009 TR 1398-1399.

This last response demonstrates the root of the problem with PEF's provision of information to the PSC. PEF did not believe the PSC was entitled to updated information in the NCRC hearing and prior to its decision in October 2009. When pressed further on cost increases since the need determination, Mr. Miller testified that the capital cost estimate is "the same as was provided in the need docket." TR 1405-06. He admitted having "insight to the numbers" provided by the Consortium for a schedule shift, but did not provide those new cost numbers. 2009 TR 1415.

The only mention of a 36 month schedule shift was in the rebuttal testimony of Mr. Jeff Lyash, which discusses a CPVRR analysis grudgingly provided in response to an interrogatory from PSC Staff. 2009 TR 2066-69. His testimony did not reveal that more than a 36-month schedule shift was already being considered or reveal what the overall cost of the Levy project would be with such a shift. He also continued to refer to the schedule shift as 20 months, not 36 months or more. For instance, on cross examination he stated:

Q. Okay. Is the schedule shift that's been announced a year-to-year variation or is it a permanent one?
A. I would think that the schedule shift here is permanent in nature. It's particularly the 20-month extension in the in-service, or in the commencement of safety-related concrete pour, yes. 2009 Trans. 2080-81.

Q. Would you consider a schedule delay of 20 to 36 months to be a significant delay?
A. Yes, I would consider that significant in terms of the established project schedule. In terms of project feasibility, however, given that this is a 60- to 80-year asset and the scale of the benefits that accrues, I'm not sure a 20-month shift in terms of that broader context is significant. 2009 Trans. 2081.

In fact, on April 15, 2009 PEF asked the Westinghouse/Shaw Consortium ("Consortium") to evaluate the costs of a schedule shift of 24 – 36 months. Ex. 238. PEF received a 30-40 page report from the Consortium on August 13, 2009, which contained "schedule analyses and associated cash flow analyses related to the six schedule shift scenarios directed by [PEF]." Ex. 219. The report "exposed four scenarios to more quantitative evaluation criteria including assessments of estimated incremental costs, estimated cash flows and schedule attributes." Ex. 219. While it appears that PEF had not come to any final conclusions on the length of the schedule shift and the magnitude of the cost increases by the September 2009 hearing, it is clear that PEF had evaluated a 24 and 36 month shift and had estimates of the significant cost increases from the Consortium.

The PSC NCRC Agenda Conference took place on October 16, 2009. During that Conference, Commissioners repeatedly mentioned their concerns over the lack of detailed information on cost increases and on the schedule shifts for the projects, but were reassured by Staff. Special Agenda, Docket 090009-EI (Oct. 16, 2009), See Transcript, Doc. 10652-09. Between the September 2009 hearing and the October 2009 Agenda Conference, however, PEF did not supply any updated information to the PSC that it had about the length of the schedule shift or the magnitude of the cost increases. PEF did not reveal that its Vice President of Nuclear Plant Development, Mr. John Elnitsky, had already recommended to the PEF Senior Management Committee a greater than 36-month schedule shift and recommended as part of this option that all activities except for the pursuit of the NRC COL should be suspended. This is the same option that was ultimately presented to the PSC in the 2010 NCRC docket by testimony filed on April 30, 2010. Ex. 220. TR 994-1001. This October 15, 2009, recommendation also included an evaluation of the increased costs of the Levy units with the schedule shift. Ex. 220.

Had up-to-date, accurate information on the schedule and costs for the LNP been presented by PEF to the PSC prior to its decision on the 2009 NCRC order, the PSC may have decided differently. This issue has also been raised regarding FPL's 2009 testimony, which points to the need for a separate docket to investigate the timeliness and accuracy of the information provided by both utilities in the NCRC annual docket and to establish PSC policies or rules for how the information is provided. Cost recovery should be suspended while this investigation proceeds.

D. LEGAL ISSUES

1. PEF's Activities Related to the LNP do not Qualify as "siting, design, licensing, and construction" of a Nuclear Power Plant as Contemplated by Section 366.93, F.S.

(Issue 2)

In this docket, PEF seeks recovery of costs related to the LNP pursuant to Section 366.93, F.S., and Rule 25-6.0423, F.A.C. The Florida legislature enacted Section 366.93, F.S., in 2006 to allow utilities to recover certain costs incurred in the "siting, design, licensing, and construction" of nuclear power plants. Section 366.93(2) required the formulation of cost recovery mechanism(s) which would allow for the recovery in rates of all prudently incurred costs. Section 366.93(2), F.S., provides, in pertinent part:

> Within 6 months after the enactment of the act, the commission shall establish, by rule, alternative cost recovery mechanisms for the recovery of costs incurred in the siting, design licensing, *and* construction of a nuclear power plant ....[4]

[Emphasis added]. Thus, the plain language and intent of Section 366.93 contemplates cost recovery only for utilities engaged in the siting, design, licensing, and construction of a nuclear

[4] Pursuant to this directive, the Commission adopted Rule 25-6.0423, F.A.C., in Order No. PSC-07-0240-FOF-EI.

power plant, *i.e.*, utilities who have demonstrated a real commitment to complete construction of a nuclear power plant.

In the instant matter, PEF is, by its own admission, not engaged in the siting, design, licensing, and construction of a nuclear power plant. Rather, in May of 2010, PEF, decided to suspend all work and major capital expenditures on the LNP except that necessary to continue its attempt at obtaining a COL from the NRC. TR 1032-1033. Assuming PEF does in fact obtain a COL from the NRC for the LNP, which is not expected until late 2012 at the earliest, TR 1038, it will then have to evaluate the many enterprise risks facing the LNP in order to determine whether or not to actually proceed with construction of the LNP. Ex. 239 at 48. Ultimately, it is a distinct possibility that the LNP could still be cancelled and never constructed. TR 978-979.

Finally, PEF's activities related to the LNP in 2010 and 2011 are solely related to its attempt to license the project, and are not related to construction of the project. PEF Petition at 37, Par. 92. Therefore, these activities do not quality as "siting, design, licensing, and construction" of a nuclear power plant as contemplated by Section 366.93, F.S. As a result, PEF's estimated 2010 costs and projected 2011 costs are not reasonable and cost recovery for these costs should be denied.

2. The Commission Has the Authority to Require a "Risk Sharing" Mechanism That Would Provide an Incentive for a Utility to Complete a Project Within an Appropriate, Established Cost Threshold and Should Develop Such a Mechanism.

(Issue 3a)

Pursuant to Section 366.06, F.S., the Commission has the express authority to "determine and fix fair, just and reasonable rates" for Florida ratepayers. The Commission has broad authority to ensure that the letter and intent of the cost recovery statute and rule are met, and to protect consumers from imprudent expenditures by regulated utilities. Moreover, nothing in the

statute or the rule prohibit the Commission from utilizing this authority to ensure that costs which utilities attempt to impose on ratepayers do not rise to levels at which it would be simply unfair to require ratepayers to bear by themselves – with the utilities bearing none of the risk. Therefore, the Commission does have the authority to require a "risk sharing" mechanism that would transfer some portion of the cost and risk of a project from the ratepayers to the utility for the costs of a project which exceed a certain cost threshold established by the Commission.

In the instant docket, as discussed in more detail *supra*, both PEF and FPL have experienced significant delays and massive corresponding cost increases in their attempts at constructing new nuclear reactors in Florida. As a result of these massive cost increases, both PEF and FPL are asking, and will continue to ask, that their ratepayers pay continuously increasing amounts, and shoulder all of the risk, for these proposed reactors which may never actually be constructed and provide any benefit whatsoever to these ratepayers. Ultimately, PEF and FPL are exposed to no risk whatsoever in regards to these proposed reactors, and thus have absolutely no incentive whatsoever to control costs. However, by establishing a risk sharing mechanism where some of the risk is transferred to the utility if the project is not completed within an appropriate cost threshold, the Commission could create such an incentive for the utilities to control the costs of a project.

As long as ratepayers continue to shoulder all of the costs of these reactors, as well as all of the risk, the utilities simply have no reason to maintain costs at reasonable levels. Due to the massive cost increases of these proposed reactors, and the great uncertainty surrounding whether these proposed reactors will ever actually produce power, the Commission should endeavor to establish a risk sharing mechanism by which PEF and FPL would be responsible for the costs of

these proposed reactors which exceed an appropriate cost threshold established by the Commission.

CONCLUSION

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

1. Disapprove PEF's long-term feasibility analysis submitted in this docket and find that PEF has failed to demonstrate the long-term feasibility of completion of Levy Units 1 & 2;
2. Enter a finding that it was unreasonable for PEF to continue pursuit of a Combined Operating License from the Nuclear Regulatory Commission for the LNP;
3. Enter a finding that it was unreasonable for PEF to continue pursuit of a Combined Operating License from the Nuclear Regulatory Commission for the LNP;
4. Establish a separate docket to investigate the timeliness and accuracy of the information provided by both PEF and FPL in the 2009 NCRC annual docket and to establish PSC policies or rules for how and when updated information should be provided; and
5. Enter a finding that PEF's activities related to the LNP do not qualify as "siting, design, licensing, and construction" of a nuclear power plant as contemplated by Section 366.93, F.S.;

6. Enter a finding that PEF's estimated 2010 and projected 2011 costs are not reasonable;
7. Deny cost recovery for PEF's estimated 2010 and projected 2011 costs for which recovery is sought in this docket; and
8. Establish a risk sharing mechanism that would provide an incentive for a utility to complete a project within an appropriate cost threshold established by the Commission.

Respectfully submitted this 10th day of September, 2010.

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CERTIFICATE OF SERVICE
Docket No. 100009

I HEREBY CERTIFY that a true and correct copy of the foregoing **POSTHEARING STATEMENT AND BRIEF** has been furnished by electronic mail (e-mail) and/or U.S. Mail this the 10th day of September, 2010.

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