BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Petition by Progress Energy Florida, Inc. for approval to recover modular cooling tower costs through environmental cost recovery clause.	DOCKET NO. 060162-EI FILED: MAY 31, 2007

PROGRESS ENERGY FLORIDA'S POST-HEARING STATEMENT OF ISSUES AND POSITIONS AND BRIEF IN SUPPORT OF ITS PETITION FOR APPROVAL TO RECOVER MODULAR COOLING TOWER COSTS

Progress Energy Florida, Inc. ("PEF" or the "Company"), by and through its undersigned counsel, hereby submits its Post-Hearing Statement of Issues and Positions and Brief in support of its petition for approval of its request to recover costs associated with the Modular Cooling Tower Project through the Environmental Cost Recovery Clause ("ECRC"), Section 366.8255, Florida Statutes. Alternatively, PEF respectfully requests that the Commission approve recovery through the Fuel and Purchase Power Cost Recovery Clause ("Fuel Clause").

INTRODUCTION

On February 24, 2006, PEF filed a petition for approval to recover the costs of its Modular Cooling Tower Project (or "Project") through the Fuel Clause. PEF implemented this project on June 9, 2006, to comply with temperature discharge limitations established in an industrial wastewater permit issued by the Florida Department of Environmental Protection ("FDEP"). On July 13, 2006, after discussions with Commission Staff, PEF filed an amended petition to recover the costs of the Project through the ECRC rather than the Fuel Clause. On August 17, 2006, Commission Staff issued a recommendation that PEF's petition be approved subject to annual review in the Commission's ongoing ECRC proceeding. Thereafter, at its August 29, 2006, Agenda Conference, the Commission heard comments from several parties, including the Office of Public Counsel ("OPC"). After deliberation, the Commission decided to

schedule this matter directly for a formal administrative hearing. As stated in the Order setting the matter for hearing, the broad issue to be considered is whether the costs of PEF's Project are eligible for recovery through either the ECRC or the Fuel Clause. Order No. PSC-06-0771-PCO-EI, at 1, issued in Docket No. 060162-EI on September 18, 2006.

The purpose of the Modular Cooling Tower Project is to ensure compliance with the FDEP permit for PEF's Crystal River plants without de-rating PEF's base-loaded Units 1 and 2. [Lawery, T.32, Exhibit No. 6 (TL-2)]. The FDEP permit limits the temperature of discharge water in the discharge canal at PEF's Crystal River plants to 96.5 degrees Fahrenheit. [Lawery, T.33, Exhibit No. 6 (TL-2), at 7 of 34]. Because of increased inlet water temperature from the Gulf of Mexico into the plant during the summer months, PEF has been forced to de-rate both Crystal River Units 1 and 2 to remain in compliance with its FDEP permit. [Lawery, T.34]. The high inlet water temperatures and associated de-rates were particularly severe in the summer of 2005. [Lawyer, T.34; Exhibit No. 5 (TL-1). A de-rate is a temporary reduction in the output of a generating unit. [Lawery, T.33]. Whenever those units are de-rated, PEF must replace the lost generation by using more expensive oil or gas-fired units, or by purchasing higher-cost power on the open market. [Id.]

Installation of the modular cooling towers along the discharge canal provides additional cooling capacity which allows the Company to remain in compliance with its FDEP permit without de-rating the base-loaded Crystal River Units 1 and 2. [Lawery, T.32]. PEF's analyses indicate that the Project will result in projected fuel cost savings of approximately $45 million over the anticipated five-year term of the Project and that annual fuel costs savings are projected to exceed the project costs over the five years. [Portuondo, T.29]. As such, the Project directly benefits PEF's customers by reducing the amount of fuel costs passed through the Fuel Clause.

Although PEF has the option to de-rate its plants to comply with the FDEP permit, the Project is the most cost-effective and beneficial compliance option for PEF's ratepayers.

STATEMENT OF BASIC POSITION

PEF's modular cooling tower project qualifies for cost recovery through the ECRC. The ECRC statute, Section 366.8255, Florida Statutes, provides that the Commission shall allow recovery of prudently incurred environmental compliance costs. The evidence demonstrates that the Modular Cooling Tower Project meets all of the ECRC eligibility criteria established by the Commission. As to the first criterion, there is no dispute that the costs are being prudently incurred after April 13, 1993. As to the second criterion, the activity is legally required to comply with a governmentally imposed environmental regulation whose effect was triggered after PEF's last test year upon which rates are based. This is because the need for the additional cooling water capacity provided by the modular cooling towers was triggered by the unanticipated high inlet water temperatures, which were not fully analyzed until after PEF's last ratemaking proceeding. Finally, to ensure against double-recovery, the third criterion requires a demonstration that the costs are not being recovered through base rates or some other recovery mechanism. PEF has made that demonstration.

The evidence also demonstrates that the Modular Cooling Tower Project will benefit PEF's customers by substantially reducing fuel costs that would otherwise be passed on to PEF's customers through the Fuel Clause. Given these significant fuel savings to customers, it also would qualify for recovery through the Fuel Clause. Although PEF's amended petition requests recovery under the ECRC, costs for the project also could be recovered through the Fuel Clause under the long-standing policy set forth in Commission Order No. 14546. This is because the Project will result in substantial fuel savings to PEF ratepayers and the costs were not anticipated at the time PEF's base rates were approved.

For these reasons, in accordance with prior Commission practice and precedent, Project costs should be included in the annual cost recovery factors subject to prudence review and true-up in the annual cost recovery proceedings.

STATEMENT OF ISSUES AND POSITIONS

ISSUE 1: What is the appropriate mechanism to recover the prudently incurred costs of Progress Energy's temporary cooling tower project?

(A) Should PEF recover costs for the Crystal River Units 1 and 2 cooling tower project through the Environmental Cost Recovery Clause?

PEF: **Yes. The Project meets the ECRC eligibility criteria established in Order No. 94-0440-FOF-EI. Project costs are being prudently incurred after April 13, 1993. The activity is legally required to comply with a governmentally imposed environmental regulation whose effect was triggered by the unanticipated high inlet water temperatures, which were not fully analyzed until after PEF's last ratemaking proceeding. The costs are not being recovered through base rates or other recovery mechanisms.**

BACKGROUND

The ECRC, Section 366.8255, Florida Statutes, authorizes the Commission to review and approve recovery of environmental compliance costs prudently incurred by electric utilities. The Commission first implemented the provisions of Section 366.8255 by Order No. PSC-94-0044-FOF-EI, issued January 12, 1994, in Docket No. 930613-EI, In re: Petition to establish an environmental cost recovery clause pursuant to Section 366.8255, Florida Statutes ("Gulf Order"). There the Commission identified the following criteria required to demonstrate eligibility for cost recovery under the ECRC:

1) costs are prudently incurred after April 13, 1993;

2) the activity is legally required to comply with a governmentally imposed environmental regulation that was enacted or became effective, or whose effect was triggered after the company's last test year upon which rates are based; and

3) such costs are not recovered through some other cost recovery mechanism or through base rates.

Gulf Order, at 6-7. In the Gulf Order, the Commission also made other findings that are relevant to this case. It allowed ECRC recovery of the costs for Gulf's Environmental Auditing Program even though no particular environmental regulation mandated the program. Gulf Order, at 19. It also allowed recovery for general air quality costs and emission monitoring costs associated with changes in the scope of compliance both with existing and new environmental regulations. Gulf Order, at 17. As recognized in Staff's recommendation in Docket No. 050958-EI, which the Commission recently approved at its May 22, 2007 agenda conference,[1] this demonstrates that from the beginning of its administration of the ECRC, the Commission has applied the statute and its criteria on a case-by-case basis, not formalistically, but with the flexibility to respond reasonably to complex and variable circumstances.[2] This approach is consistent with the broad language of Section 366.8255, Florida Statutes, which provides that the Commission shall allow recovery of prudently incurred environmental compliance costs. (Emphasis supplied).

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[1] See Staff Recommendation, at p.8, issued May 10, 2007 in Docket No. 050598-EI, In re: Petition for approval of new environmental program through ECRC by Tampa Elec. Co. (Docket filing No. 03946-07). As shown in Docket filing No. 04188-07, the Commission approved this Staff Recommendation by vote at its agenda conference on May 22, 2007.

[2] See also, for example, Order No. PSC-99-1954-PAA-EI, issued October 5, 1999 in Docket No. 990667-EI, In re: Petition by Gulf Power Company for approval of Plant Smith Sodium Injection System as new program for cost recovery through environmental cost recovery clause. (Commission approved the project both to comply with new clean air act amendment Phase II requirements and to maintain compliance with existing air permit requirements); Order No. PSC-98-1764-FOF-EI, issued December 31, 1998, in Docket No. 980007-EI, In re: Environmental Cost Recovery Clause (Commission approved Gulf's additional groundwater monitoring equipment to continue with existing legal requirement because greater treatment capacity was needed.).

The Modular Cooling Tower Project satisfies each of the criteria set forth in the Gulf Order. There is no dispute that Project costs are being prudently incurred after April 13, 1993. The activity is legally required to comply with a governmentally imposed environmental regulation whose effect was triggered by the unanticipated high inlet water temperatures which were not fully analyzed until after the Company's last ratemaking proceeding in Docket No. 050078-EI, In re: Petition for rate increase by Progress Energy Florida, Inc. [Lawery, T.34; Portuondo; T. 25, 70] Finally, as further discussed below, the project costs are not recovered through base rates.

THE PROJECT SATISFIES THE SECOND ECRC CRITERION BECAUSE THE FULL EFFECT OF THE FDEP PERMIT LIMIT WAS NOT TRIGGERED UNTIL AFTER PEF'S LAST RATEMAKING PROCEEDING.

OPC primarily argues that the Project does not satisfy the second ECRC criterion because the discharge temperature permit limit was established before the Company's last rate case test year. As PEF witness Javier Portuondo explains [Portuondo, T. 25, 63], however, the relevant language of the Gulf Order states that

> the activity must be legally required to comply with a governmentally imposed environmental regulation that was enacted or became effective, *or whose effect was triggered* after the company's last test year upon which rates are based.

Gulf Order, at 6-7 (emphasis added). OPC's witnesses attempt to gloss over the italicized language, which focuses on when the effect of the environmental requirement *was triggered*, rather than just the date it was put in place. While OPC witness Hewson opines that this language "was likely adopted in response to environmental requirements that can be phased in over a several year period" [Hewson, T.44], he demonstrates no personal knowledge or expertise on which to base this opinion and he offers no legislative history or Commission precedent to support it. Based on the plain language set forth in the Gulf Order, the Modular Cooling Tower

Project satisfies the second ECRC criterion because the need for the additional cooling capacity to comply with the FDEP permit limitation was triggered by the unusually high inlet water temperatures during the summer of 2005, which were not fully analyzed until after PEF's MFRs were submitted and its base rates were approved in Docket No. 050078. [Portuondo, T.70]. In fact, the decision to implement the project was not made until February, 2006. [Id.].

As Mr. Hewson points out, the permit limit at issue was "in place" before PEF's last ratemaking proceeding. [Hewson, T.43]. However, the Commission previously has approved ECRC recovery for costs incurred to comply with environmental requirements that were in place prior to the test year upon which the Company's base rates were based. In 2003, the Commission approved PEF's request to recover activities necessary to comply with requirements established in 1998 amendments to FDEP's above ground storage tank rule. See Order No. PSC-03-1348-FOF-EI, at p. 10, issued Nov. 25, 2003 in Docket No. 030007-EI, In re: Environmental cost recovery clause. As shown in Table AST of the rule, although the rule amendments were in place since 1998 (before the test year upon which PEF's then-current rates were based), PEF was not required to undertake any compliance activities to meet with the specific requirements for the storage tanks at issue (keynotes W and U) until 2005 and 2010. [Portuondo, T.71; Exhibit No.11 (JP-3), at 5]. In other words, the full effect of the pre-existing environmental requirement was not triggered until after PEF's last base rate proceeding. The same logic applies to the Modular Cooling Tower Project because the full effect of the FDEP permit limit was not triggered until after PEF's base rates were established. Prior to that time, there had been no determination that additional cooling capacity was needed to comply with the FDEP permit. [Portuondo, T.71].

OPC tries to distinguish this precedent by simply pointing out that the delayed compliance deadlines were set forth in the FDEP rule itself. That, however, is a distinction without a difference. The key point is that the full effect of the rule (i.e., the need to upgrade specific

storage tanks) was not triggered until after the company's last rate case. Here, the case for recovery is even stronger because at the time the FDEP permit limit was established, PEF had no reason to think that additional cooling capacity would be needed to maintain compliance. As noted above, the need for additional cooling capacity was triggered by the unusually high inlet water temperatures during the summer of 2005, which were not fully analyzed until after PEF's MFRs were submitted and its base rates were approved in Docket No. 050078-EI. [Portuondo, T.70].

Because the need for the cooling tower project was not determined until February 2006, the company could not anticipate this project for inclusion in the 2006 projected test year for its last ratemaking proceeding. Although the FDEP permit does not mandate a particular method to meet the temperature limitation, the Company is legally required to take reasonable and necessary measures to comply with the temperature limitation at all times.[3] [Exhibit No. 6 (TL-2), at 7 of 34]. To remain in compliance with the FDEP permit, the Company has two options; de-rate, and thus decrease the availability of its baseload capacity, or add additional cooling capacity. The modular cooling tower project will provide additional cooling capacity, restore plant capacity to its baseline level and avoid higher alternate fuel costs being borne by ratepayers. Although PEF has the option to de-rate its plants to comply with its permit, it is

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[3] In prior cases, the Commission has recognized that a compliance activity is "legally required" for purposes of the second ECRC criterion even if the permit or other legal requirement does not specify how compliance must be achieved. See Order No. PSC-02-1421-PAA-EI, issued October 17, 2002, in Docket No. 020648-EI, In re: Petition for approval of environmental cost recovery of St. Lucie Turtle Net Project for period of 4/15/02 through 12/31/02 by Florida Power & Light Company (by requiring installation of a turtle net with no other engineering details, "the license impliedly requires that FPL take whatever measures are necessary to make the net work properly."). See also, Staff Recommendation issued May 10, 2007 in Docket No. 050598-EI, In re: Petition for approval of new environmental program through ECRC by Tampa Elec. Co. (approved by Commission vote on May 22, 2007 as shown on docket filing 04188-07).

undisputed that the modular cooling tower is the most cost-effective and beneficial compliance option for PEF's ratepayers. [Lawery, T.35].

THE PROJECT SATISFIES THE THIRD ECRC CRITERION BECAUSE THE COSTS ARE NOT RECOVERED THROUGH SOME OTHER COST RECOVERY MECHANISM OR THROUGH BASE RATES

Regarding the third ECRC criterion, PEF has provided uncontroverted evidence that the costs of the Modular Cooling Tower Project are not recovered in base rates. Mr. Javier Portuondo, who was responsible for the preparation of the Minimum Filing Requirements ("MFRs") that PEF submitted in its last rate case [Portuondo, T.25], has submitted relevant schedules from those MFRs showing that the costs of this project were not included for cost recovery within base rates. Specifically, line 12 of Exhibit No. 3 (JP-1) compares the amounts budgeted to actual expenditures for rental expenses from 2000 through the 2006 test year. The balance for both years is zero, demonstrating that PEF had not incurred cooling tower rental costs in 2000 and did not anticipate them for its 2006 test year. [Portuondo, T.26, 75]. Similarly, Exhibit No. 4 (JP-2) shows the monthly in-plant balances for the 2006 test year. Prior to 2006 when the Modular Cooling Tower Project was placed into service, PEF had never incurred any capital costs for modular cooling towers. [Portuondo, T.75]. Thus, if the project had been anticipated when the MFRs were submitted, the increase in plant-balance for FERC account 314 reflected in Exhibit No. 4 (JP-2) would have had to be large enough to encompass the costs of the project. [Id.]. However, the schedule does not show any increases that would accommodate plant additions for the modular cooling towers. [Portuondo, T. 27, 75]. These two exhibits demonstrate that the costs of the Modular Cooling Tower Project clearly were not included in the MFRs for the test year in PEF's last rate case.

Although OPC's witness, Ms. Merchant, opines that MFRs cannot demonstrate whether particular costs are included in base rates [Merchant, T.58-59], that opinion simply is not supported by the record and is inconsistent with prior Commission precedent. As recently as the 2006 annual ECRC docket, the Commission has relied on MFRs in addressing whether costs were included in base rates for purposes of determining eligibility for ECRC recovery. See Order No. PSC-06-0972, at 8, issued Nov. 22, 2006 in Docket No. 060007-EI, In re: Environmental cost recovery clause ("FPL did not include any costs associated with its legal challenge of the CAIR rule in the MFRs that were filed in Docket No. 050045-EI. Those MFRs were prepared before the final CAIR rule was published by EPA, and FPL had no reason at the time to anticipate that it would need to pursue a legal challenge.").

Ms. Merchant also errs in suggesting that the potential effect of the Modular Cooling Tower costs on PEF's rate of return is somehow relevant to this case. In the original Gulf Order implementing the ECRC, the Commission specifically rejected OPC's argument that ECRC recovery should be subject to an earnings test under which recovery would be denied if a utility is earning within its allowed return on equity range.[4] Gulf Order, at 3-4. In this case, OPC claims that Ms. Merchant is not advocating imposition of an earnings test "per se" but is making a point that precluding recovery of an "ineligible cost" through a cost recovery clause would not be a "harsh result" for a utility. [T.19]. Be that as it may, Ms. Merchant's testimony simply begs the question of whether a cost is "eligible" for recovery. In the Gulf Order, the Commission specifically sought to ensure against double-recovery by establishing the eligibility criterion that the costs at issue were not anticipated when the utility's base rates were established.

[4] Likewise, Order No. 14546 did not establish an earnings test for determining whether "other" non-specified fuel-related costs are recoverable under the Fuel Clause.

Gulf Order, at 6-7. When, as here, that criterion is met, OPC's fear of potential abuse is unfounded.

Based on the evidence, PEF has demonstrated that the Modular Cooling Tower Project meets the criteria for recovery under the ECRC. Contrary to OPC's arguments, the Project is necessary to comply with a governmentally imposed environmental regulation whose effect was triggered after the Company's last test year upon which rates are based, and Project costs are not being recovered through base rates or other recovery mechanisms. Accordingly, PEF should recover costs for the Project through the Environmental Cost Recovery Clause, Section 366.8255, Florida Statutes.

(B) Should PEF recover costs for the Crystal River Units 1 and 2 cooling tower project through current base rates?

PEF: **No. As explained in PEF's positions to Issues 1(A) and (C), the costs for the Project meet the criteria for recovery through the ECRC and through the Fuel Clause under the flexible policy established in Commission Order No. 14546 and applied in subsequent orders. The costs for the Project were not anticipated at the time PEF's base rates were established/approved and therefore are not recovered in base rates. The effect of recovery on PEF's rate of return is not relevant under established Commission precedent which previously rejected OPC's argument that an earnings tests should be established to determine ECRC eligibility.**

As explained in PEF's positions to Issues 1(A) and (C), the costs for the Modular Cooling Tower Project meet the criteria for recovery under the ECRC and Order No. 14546, including the requirement that they are not being recovered in base rates or some other recovery mechanism. As discussed above, because there is no earnings test under the cost recovery clauses, the potential effect on PEF's rate of return is not relevant to this case. Moreover, the modular cooling tower costs were not included in the MFRs submitted for the Company's last rate case test year and they were not anticipated when PEF's current rates were approved. Accordingly, the costs are not being recovered in base rates.

Contrary to OPC's argument, the costs of the Modular Cooling Tower Project are not operation and/or maintenance ("O&M") costs of the type typically included in base rates. [See Merchant, T. 61-62; Hewson, T.45]. Most operation and maintenance costs (including costs incurred in planned or unplanned outages) are recognized and anticipated when base rates are determined because they are meant to repair or replace existing equipment due to natural wear and tear. [Portuondo, T.73] The Modular Cooling Tower Project is entirely different. It is not designed to restore operational efficiency that has been lost due to normal wear and tear or other operational problems. It is an environmental compliance measure necessitated by an unforeseeable climatic issue, manifesting itself in the higher than normal cooling water intake temperatures, which is entirely beyond the control of the Company. Moreover, this climatic issue was unanticipated when the FDEP permit limitations were established and when the Company's current rates were set. [Portuondo, T.72].

Finally, OPC's witness is simply wrong in suggesting that recovery of project costs would somehow contravene the Company's rate case settlement. [Merchant, T.64]. Paragraph 4 of the Settlement, which the OPC witness cites, precludes the Company from petitioning for "*new* surcharges." Order No. PSC-05-0945-S-EI, issued Sep. 28, 2005 in Docket No. 050078-EI, In re: Petition for Rate Increase by Progress Energy Florida (Attachment A, at 4) (emphasis added). It does not prevent PEF from recovering newly incurred costs under *existing* cost recovery clauses. Moreover, Paragraph 18 of the Settlement explicitly contemplates that new environmental capital costs would be recoverable under the ECRC. Id. (Attachment A, at 15).

(C) Should PEF recover costs for the Crystal River Units 1 and 2 cooling tower project through the Fuel Cost Recovery Clause?

PEF: **If ECRC recovery is not approved, PEF should recover Project costs through the Fuel Clause. The Project meets the criteria for recovery of unanticipated fuel-related costs in Order No. 14546. Specifically, the Project will result in significant

> fuel savings and Project costs were not recognized or anticipated in the cost levels used to determine current base rates. Because the Project was necessitated by unanticipated climatic conditions beyond PEF's control, contrary to OPC's argument, the Project is not the type of operation and maintenance cost recognized and anticipated when base rates are determined.**

While Project costs are recoverable through the ECRC for the reasons discussed above, given the unique nature of the significant fuel savings, Project costs also are eligible for recovery through the Fuel Clause. In 1985, Commission Order No. 14546, 85 FPSC 7:67, established comprehensive guidelines for the recovery of costs through the Fuel Clause. In that Order, the Commission recognized that certain unanticipated costs are appropriate for recovery through the Fuel Clause. Specifically, the Commission recognized that recovery is appropriate for:

> Fossil fuel-related costs normally recovered through base rates but which were not recognized or anticipated in the cost levels used to determine current base rates and which, if expended, will result in fuel savings to customers.

The Commission repeatedly has approved recovery of unanticipated costs through the Fuel Clause when those expenditures resulted in significant savings to the utility's ratepayers.[5] As discussed above, the costs of the Modular Cooling Tower Project were unanticipated at the time of PEF's last rate case filing. Moreover, as noted above, PEF's analyses indicate that the Project will result in projected fuel costs savings of approximately $45 million over the anticipated five-year term of the Project and that annual fuel costs savings are projected to exceed the project costs over the five years. [Portuondo, T.29] As such, the costs of this Project qualify for recovery through the Fuel Clause under the policy set forth in Order No. 14546.

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[5] See e.g., Order Nos. PSC-98-0412-FOF-EI, issued in Docket No. 980001-EI, In re: Fuel and Purchase Power Cost Recovery Clause; Order PSC-97-0359-FOF-EI, in Docket No. 970001-EI, In re: Fuel and Purchase Power Cost Recovery Clause; Order No. PSC-96-1172-FOF-EI, issued Sep. 19, 1996 in Docket No. 960001-EI, In re: Fuel and Purchase Power Cost Recovery Clause; Order No. PSC-95-0450-FOF-EI, issued April 6, 1995 in Docket No. 950001-EI, In re: Fuel and Purchase Power Cost Recovery Clause; and Order No. PSC-94-1106-FOF-EI, issued Sep. 7, 1994 in Docket No. 940391-EI, In re: Petition for Approval to recovery Orimulsion project costs.

OPC witness Hewson argues that the Project does not qualify for recovery under Order No. 14546 because the Project will not result in lower "delivered" fuel costs. [Hewson, T. 46] . However, nothing in Order No. 14546 or subsequent orders implementing it specifies that projects must be directly tied to "delivered" fuel costs. To the contrary, in Order No. 14546, the Commission expressly sought to establish a "flexible" policy for projects that will result in fuel savings to customers. See Order No. 14546 at p. 3, 85 FPSC 7:69. In applying this flexible policy over the past 20 or so years, the Commission has not sought to limit the types of costs incurred, but rather to ensure a link to the types of costs avoided. [Portuondo, T.73].

This flexible policy is demonstrated by the Commission's approval of FPL's request for recovery of costs associated with an uprate at its Turkey Point nuclear plant. See Order No. PSC-96-1172-FOF-EI, issued Sep. 19, 2006 in Docket No. 96001-EI, In re: Fuel and Purchcase Power Cost Recovery Clause. In that case, the costs incurred were of a capital nature and associated with nuclear production, not fossil fuel. Id. at 9. Nevertheless, because the project would allow FPL to lower total overall fuel costs by more than the expected cost of the project, the Commission found that the project fell under the scope of Order No. 14546. Id. This Commission precedent indicates that any costs that result in overall fuel savings can be considered fossil fuel-related costs even though they do not have a direct effect on delivered fossil fuel prices. [Portuondo, T.73].

Finally, OPC witness Hewson opines that if the Commission approves recovery of this project, it will have to approve recovery of virtually all O&M projects. [Hewson, T.47]. This "slippery slope" argument is not supported by the record or past Commission precedent. As discussed above, this is not a typical O&M project designed to improve unit performance and availability; it is a plant addition necessary to ensure compliance with an environmental requirement due to unforeseeable circumstances beyond the Company's control. Whether other,

hypothetical activities may be eligible for cost recovery under the ECRC or Fuel Clause depends upon the specific circumstances involved. For example, the Commission previously has approved recovery of capital expenditures for fuel switch projects of the type cited by Mr. Hewson where, under the criteria set forth in Order No. 14546, they would result in fuel cost savings. See, Order No. PSC-95-0450-FOF-EI, at 10, issued Apr. 6, 1995 in Docket No. 950001-EI, In re: Fuel and Purchase Power Recovery Clause (modifications enabling FPL units to burn a more economic grade of residual fuel oil); Order No. PSC-98-0412-FOF-EI, at 2-3, issued Mar. 20, 1998 in Docket No. 980001-EI, In re: Fuel and Purchase Power Recovery Clause (conversion of Suwannee Unit 3 to burn natural gas); and Order No. PSC-97-0359-FOF-EI, at 11-12, issued Mar. 31, 1997 in Docket No. 970001-EI, In re: Fuel and Purchase Power Recovery Clause (conversion of FPC units to burn natural gas).

In Order No. 14546, the Commission stated that recovery of costs, such as these, that are not specifically identified in the body of the order will be made "on a case by case basis." Order No. 14546, at 5, 85 FPSC at 7:71. Thus, Mr. Hewson's fear of limitless approval of O&M projects under the Fuel Clause is unfounded.

ISSUE 2: How should the Commission's decision on Issue 1 be implemented?

PEF: **Subject to prudence review and true-up in the annual cost recovery proceedings, Project costs should be included in the annual cost recover factors in accordance with prior Commission practice and precedent.**

In accordance with prior Commission practice and precedent, Project costs should be included in the annual cost recovery factors subject to prudence review and true-up in the annual cost recovery proceedings.

CONCLUSION

The evidence demonstrates that the Modular Cooling Tower Project meets all of the ECRC eligibility criteria. PEF is legally required to comply with the thermal discharge limits in the Crystal River industrial wastewater permit. The Project will help ensure continued permit compliance while at the same time generating fuel savings that will be passed on to PEF's customers. In addition, because the Project will result in substantial fuel savings to PEF's ratepayers, the Project is eligible for recovery under the Fuel Clause. Accordingly, Progress Energy respectfully requests that the Commission enter a Final Order approving recovery of Project costs through the ECRC or, alternatively, through the Fuel Clause. In accordance with established Commission practice, continued cost recovery of this project would be based upon the Commission's annual review of the costs and prudence of the project in the annual cost recovery proceedings.

Respectfully submitted, this 31st day of May, 2007.

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CERTIFICATE OF SERVICE

I hereby certify that true and correct copies of Progress Energy Florida's Post Hearing Statement and Brief in Docket No. 060162-EI have been provided by electronic mail and U.S. Mail on this 31st day of May, 2007, to the following:

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