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<<PEF Post Hearing Statement & Brief.pdf>> Attached for filing and e-service on behalf of Progress Energy Florida is Progress Energy Florida, Inc.'s Post-Hearing Statement and Brief in Support of its Petition to Recover Costs of Crystal River Unit 3 Uprate Through the Fuel Clause (41 pages).

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BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Petition by Progress Energy Florida, Inc. to recover costs of Crystal River Unit 3 uprate through fuel clause	Docket No. 070052-EI Submitted for Filing: August 28, 2007

PROGRESS ENERGY FLORIDA, INC.'S POST-HEARING STATEMENT AND BRIEF IN SUPPORT OF ITS PETITION TO RECOVER COSTS OF CRYSTAL RIVER UNIT 3 UPRATE THROUGH THE FUEL CLAUSE

Progress Energy Florida, Inc. ("PEF" or the "Company"), submits its Post-Hearing Statement of Issues and Positions, Findings of Fact and Conclusions of Law, and Brief in support of its petition to recover costs of the Crystal River Unit 3 uprate project ("CR3 Uprate Project") through the fuel and purchased power cost recovery clause ("Fuel Clause").

I. PEF's Brief in Support of its Request for Fuel Clause Recovery of the CR3 Uprate Project Costs.

The CR3 Uprate Project costs are properly recovered through the Fuel Clause under Commission policy established in item 10 of Commission Order No. 14546. Order 14546 sets forth the type of costs appropriate for Fuel Clause recovery. Order No. 14546 at 1. Item 10 of Order 14546 provides for the recovery of "fossil fuel-related costs [1] normally recovered through base rates but which were not recognized or anticipated in the cost levels used to determine current base rates and [2] which, if expended, will result in fuel savings to customers." Order No. 14546 at 4. (numerical emphasis added). The undisputed intent of item 10 is to encourage utilities to invest in projects that result in fuel savings to the benefit of customers. (Tr. P. 428, L. 19 to P. 429, L. 2; P. 515, L. 11-24). For this reason the Commission developed the straight-forward, two-part test of item 10 and the Commission has consistently applied it ---

without regard to additional tests or factors --- for over twenty (20) years to determine if the utility's project costs are recoverable through the Fuel Clause.

The CR3 Uprate Project indisputably satisfies the two-part test of item 10 of Order 14546. The CR3 Uprate Project costs (1) were not anticipated and are not included in the cost levels set by the Company's Minimum Filing Requirements ("MFRs"), which were used to determine PEF's current base rates and (2) the CR3 Uprate Project costs, when incurred, will generate substantial fuel savings for PEF's customers. (Tr. P. 401, L. 20-23; P. 515, L. 20-24; P. 230, L. 1-5; P. 230, L. 12-15; P. 438, L. 23-24). In fact, PEF's customers are expected to receive in excess of $2.6 billion in fuel savings over the extended life of CR3, with an expected net present value of $640 million, resulting in $320 million in fuel savings benefits for customers when savings are netted against project costs. (Tr. P. 133, L. 7-11; P. 230, L. 1-5).

All parties agree that the CR3 Uprate Project is beneficial for PEF's customers and that PEF should complete the project. (Tr. P. 528-29; P. 378, L. 4-9; P. 428, L. 2-9). There was further agreement that item 10 of Order 14546 was designed to "get creativity," and as an incentive, for utilities to invest in projects that result in fuel savings. (Tr. P. 529-30; P. 428, L. 19 to P. 429). To this end, Office of Public Counsel ("OPC") witness Mr. Lawton admitted that "allowing recovery through the fuel clause is a way of providing an incentive to the company to invest in additional nuclear beyond that incentive that would be provided by base rate recovery." (Tr. 547, L. 15-21). The incentive worked because PEF is pursuing this nuclear power reactor uprate project to achieve fuel savings for its customers. (Tr. P. 558, L. 9-14).

Interveners do not seek to apply Commission policy as clearly expressed in the two-part test in item 10 of Order 14546. They add terms or tests that are nowhere found in item 10, or the Commission's Order, and that are unsupported by any justification other than a desire to change

the policy expressly stated in item 10. In fact, if the Commission accepted any of the terms or tests proposed by Interveners the Commission policy in item 10 would be undermined. (Tr. P. 558, L. 20 to P. 559, L. 2). Moreover, the Commission should not entertain any change to Commission policy without allowing interested and affected parties a forum to support or challenge with evidence any policy change. Order No. 19732, Docket Nos. 850152-TL and 861383, 1988 Fla. PUC LEXIS 1019, p. 7 (July 27, 1988); City of Plant City v. Mayo, 337 So. 2d 966 (Fla. 1976).

For all these reasons, as more fully explained below, PEF respectfully requests that the Commission grant its petition and determine that the CR3 Uprate Project costs are eligible for recovery through the Fuel Clause.

A. The CR3 Uprate Satisfies Commission policy in Item 10 of Order 14546.

Item 10 is a statement of general policy, (Tr. P. 505, L. 3-12), to "get creativity" or to "incentivize" utilities to do projects to get fuel savings to customers. (Tr. P. 529-30). It is "meant to encourage utilities to spend money that they might not otherwise choose to spend to save fuel costs." (Tr. 428, L. 22-25, Tr. 429, 1-2). OPC's witness Mr. Lawton admitted that "allowing recovery through the fuel clause is a way of providing an incentive to the company to invest in additional nuclear beyond that incentive that would be provided by base rate recovery." (Tr. P. 547, L. 15-21). PEF was in fact aware of this policy in item 10 of Order 14546 and pursued the CR3 Uprate Project because of it. (Tr. P. 558, L. 13-14).

The CR3 Uprate Project satisfies this Commission policy. The CR3 Uprate Project is innovative in design, engineering, and construction. (Tr. P. 54, L. 16-21; P. 55, L. 12-15). It is unique for the design of nuclear reactors like CR3 and for the extent of the uprate, compared to

uprates at other nuclear facilities in the United States. (Id.).[1] The CR3 Uprate Project will further be efficiently and economically undertaken in three phases during existing, planned re-fueling outages at CR3, (Tr. P. 46, L. 3 to P. 47, L. 21), ensuring that customers receive the fuel savings benefits generated by the CR3 Uprate Project without incurring replacement energy costs. Everyone agrees that the CR3 Uprate Project is beneficial and that the Company should pursue the project because it generates fuel savings for PEF's customers through additional nuclear generation. (Tr. P. 495, L. 14-17; P. 528-29; P. 378, L. 4-9; P. 428, L. 2-9). As a result, the CR3 Uprate Project clearly satisfies the Commission policy under item 10 of Order 14546.

B. The CR3 Uprate Project Satisfies the Test for Cost Recovery in Item 10 of Order 14546.

Item 10 of Order 14546 provides for fuel clause recovery of the following: Fossil fuel-related costs (1) normally recovered through base rates but which were not recognized or anticipated in the cost levels used to determine current base rates and (2) which, if expended, will result in fuel savings to customers. Order 14546 at 4. There are no further, additional requirements to demonstrate costs are recoverable through the Fuel Clause under item 10. Indeed, even Interveners must agree that these two are the only requirements expressly articulated in item 10 and that none of the additional requirements or tests that they seek to add

[1] Intervener witness Pollock did testify, based on a list of other uprates he found on a Nuclear Regulatory Commission (NRC) website, that the CR3 Uprate was not an innovative project. (Tr. P. 351, L. 1-20). He admitted, however, that he is not a nuclear engineer (Tr. P. 375, L. 14-16), he did not do any analysis to compare the CR3 Uprate Project to those other uprates on the website list, and he has never worked at any of the nuclear generation units that have had an uprate. (Tr. P. 375, L. 17-20; P. 377, L. 1-11). Mr. Roderick, on the other hand, is a nuclear engineer with more than 23 years of experience with nuclear generation unit operation and he has overseen the technical, engineering and construction aspects of the CR3 Uprate Project. (Tr. P. 32, L. 14 to P. 33, L. 14). He testified that the CR3 Uprate Project is unique for a Babcock & Wilcox-designed nuclear unit like CR3 and the largest uprate ever attempted at such a unit, requiring specific, technical innovations that make the CR3 Uprate Project different from all the other uprates listed on the NRC website. (Tr. P. 54, L. 16-21; P. 55, L. 12-15).

can be found there. (Tr. P. 368, L. 9-22; P. 369, L. 10 to P. 370, L. 5; P. 423, L. 1-7; P. 504-505). Because the CR3 Uprate Project satisfies both requirements of item 10, the Project costs should be recovered through the Fuel Clause.

First, the utility must establish that the fossil fuel-related costs are not anticipated in the cost levels used to establish current base rates. PEF's cost levels used to establish current base rates were its MFRs filed in support of its last base rate case in 2005. (Tr. P. 231, L. 6-17). PEF's MFRs did not include the CR3 Uprate Project costs, (Tr. P. 230, L. 12 to P. 231, L. 6), and PEF did not anticipate the CR3 Uprate Project at that time. (Tr. P. 227, L. 11-14). This was undisputed by Interveners. (Tr. P. 401, L. 20-23). As a result, PEF satisfies the first part of the two-part test under item 10 of Order 14546.

Some (but not all) Interveners claim that the CR3 Uprate Project costs do not meet this test because they read "fossil fuel-related costs" to really mean "fossil fuel costs." This, of course, is not what the Commission said in item 10 of Order 14546 and it is not the way the Commission has applied item 10. The Commission has consistently applied item 10 to costs that reduce or replace fossil fuel costs to customers and, thus, they are "fossil fuel-related costs" in the only way that should matter, namely, resulting fuel savings to customers. (Tr. P. 239, L. 16-22).

To illustrate, in Order 96-1172, where FPL was granted cost recovery through the Fuel Clause for its nuclear uprate costs, the Commission specifically explained that: "[t]he savings are due to the difference between low cost nuclear fuel replacing higher cost fossil fuel." In re: Fuel and Purchased Power Cost Recovery Clause, Order No. PSC-96-1172-FOF-EI, Docket No. 960001-EI, 1996 WL 554613, *3 (Sept. 19, 1996); (Tr. P. 426, L. 18 to P. 427, L. 11). What type of cost is incurred, then, is not the critical determination; rather it is whether the cost, if

incurred, results in the reduction in the use of, or replacement of, fossil fuels with resulting fuel savings to customers. (Tr. P. 239, L. 16-22; Order No. PSC-96-1172-FOF-EI).

The Commission has approved cost recovery through the Fuel Clause under item 10 of Order 14546 for other capital projects that generate fuel savings the same way the CR3 Uprate Project will generate fuel savings -- by displacing more expensive fossil fuel generation with lower cost fuel generation options. In re: Fuel and Purchased Power Cost Recovery Clause, Order No. PSC-98-0412-FOF-EI, Docket No. 980001-EI, 1998 WL 173332 (Mar. 20, 1998); In re: Fuel and Purchased Power Cost Recovery Clause, Order No. PSC-97-0359-FOF-EI, Docket No. 970001-EI, 1997 WL 199376 (Mar. 31, 1997); In re: Fuel and Purchased Power Cost Recovery Clause, Order No. PSC-96-0353-FOF-EI, Docket No. 960001-EI, 1996 WL 189999 (Mar. 13, 1996); In re: Fuel and Purchased Power Cost Recovery Clause, Order No. PSC-95-0450-FOF-EI, Docket No. 950001-EI, 1995 WL 220901 (Apr. 6, 1995); In re: Fuel and Purchased Power Cost Recovery Clause, Order No. PSC-95-1089-FOF-EI , Docket No. 950001-EI, 1995 WL 553104 (Sept. 5, 1995); and In re: Petition for approval to recover Orimulsion project costs through an oil-backout cost recovery factor by Florida Power and Light Co., Order No. PSC-94-1106-FOF-EI, Docket No. 940391-EI, 1994 Fla. PUC Lexis 1126 (Sept. 7, 1994). Because the CR3 Uprate Project costs, when incurred, will create fuel savings by displacing more expensive fossil fuel and purchased power with lower-cost nuclear generation, (Tr. P. 137, L. 9-16), the CR3 Uprate Project costs are indeed "fossil fuel-related costs."

Indeed, in the 2001 fuel docket, all parties --- including OPC and the Florida Industrial Power Users Group ("FIPUG") --- stipulated that "the appropriate regulatory treatment for capital projects with an in-service date on or after January 1, 2002 that are expected to reduce long-term fuel costs is the treatment prescribed by the Commission" in item 10 of Order 14546.

See Order No. PSC-01-2516-FOF-EI, Docket No. 010001-EI (Dec. 26, 2001) (emphasis added). The Commission approved this stipulation as reasonable. (Id.). If the costs recoverable under item 10 were truly limited by the Commission in Order 14546 to "fossil fuel" type costs then OPC and FIPUG would not have stipulated to recovery of "capital project" costs under item 10 that were expected to reduce long-term fuel costs and the Commission would not have approved that stipulation as reasonable.

Interveners also argue that the CR3 Uprate Project costs should be considered base rate costs -- even though they were not included in the Company's MFRs -- because the nature of setting base rates is such that the utility's costs and revenues will always vary after rates are set and utility costs should, according to Interveners, be absorbed by the utility as long as the utility is still earning a return within its allowed range. (Tr. P. 402, L. 8-19). This process for setting base rates has not changed and the Commission, of course, was certainly aware of how base rates are set and how they work when it adopted its policy in item 10 of Order 14546. (Tr. P. 260, L. 2-13). Yet, the Commission expressly said the test is not whether the costs could be recovered from base rates, but rather whether the costs were actually recognized or anticipated in the costs levels (i.e. MFRs) used to determine current base rates. Order 14546 at 4. Interveners' argument, then, is flatly contradicted by what the Commission said and did in item 10.

Indeed, no project costs would be eligible for recovery under Item 10 if Intervener's argument was adopted. Item 10 specifically contemplates Fuel Clause recovery for costs that are "normally recovered through base rates," if the two-part test of item 10 is met. Precluding Fuel Clause recovery because the costs are base rate costs, as Interveners assert, means that the very costs contemplated for recovery through the Fuel Clause under item 10 could not be recovered.

This interpretation completely undermines the policy set forth by the Commission in Item 10 of Order 14546.

In no Commission proceeding addressing a request for cost recovery under Commission policy in item 10 of Order 14546 has the Commission denied recovery because the costs at issue were base rate costs and could be recovered in base rates. Instead, when the Commission has denied a petition for cost recovery under item 10 of Order 14546 the Commission did so because the two-part test of item 10 was not met by the utility. See In re: Fuel and Purchased Power Cost Recovery Clause with Generating Performance Incentive Factor, Order No. PSC-05-1252-FOF-EI, Docket No. 050001-EI (Dec. 23, 2005).

In Order PSC-05-1252, FPL had requested Fuel Clause recovery, pursuant to Item 10, of the costs of a sleeving project for its nuclear unit, St. Lucie 2. FPL argued that, by re-sleeving the tubes in the steam generator, FPL would be able to run the unit at a higher capacity factor, closer to 100% capacity, thus generating fuel savings from the additional nuclear generation. FPL claimed the re-sleeving project costs were not recognized or anticipated in the cost levels used to set FPL's base rates. (Id. at *3).

The evidence demonstrated, however, that FPL management had approved the sleeving project three months before their rate case settlement agreement was signed, thus, FPL was certainly aware of the project earlier, at a time when their cost levels for base rates were being established. (Id.). Indeed, the Commission found that FPL "knew of the potential to sleeve the tubes when it filed its MFRs and rate case testimony." (Id.). The Commission did not deny FPL's request because the costs were typical of base rate costs. The Commission denied FPL's request because FPL did not meet the first part of the test under item 10 of Order 14546.

Unlike FPL's re-sleeving project costs, the CR3 Uprate Project costs were not recognized or anticipated in PEF's cost levels used to establish PEF's current rates. That much is undisputed. There is no evidence that PEF had initiated the CR3 Uprate Project prior to its rate case settlement. (Tr. P. 230, L. 12-16). Rather, the CR3 Uprate Project was developed in 2006 especially because of Commission policy under item 10 of Order 14546. (Tr. P. 229, L. 4-8; P. 558, L. 9-14). The CR3 Project meets the first part of the test under item 10.

The second part of the test under item 10 of Order 14546 is that the utility must demonstrate that the project costs will generate fuel savings. PEF has met that burden too. The CR3 Uprate Project is expected to produce $2.6 billion in fuel savings over the extended life of CR3. (Tr. P. 230, L. 1-2). The net present value of these fuel savings to customers is $640 million. (Tr. P. 230, L. 2-4). The savings netted against the Uprate Project costs will result in fuel savings of $320 million for customers on a net present value basis. (Id.).

There is no real dispute between the parties that PEF's cost and fuel savings estimates were reasonable and that, if the Project costs are incurred, they will result in fuel savings to customers. OPC witness Mr. Lawton agreed that additional nuclear generation is the lowest cost fuel source available today, (Tr. P. 515, L. 20-24), and that, based on the Company's assumptions, "if you can save customers money, the Company should do it, and [the Commission] should approve it." (Tr. P. 529, L. 3-4). All intervener witnesses in fact agreed the Uprate Project could be beneficial for customers, (Tr. 364, L. 20-23; P. 428, L. 2-3; P. 495, L. 14-17), and they urged the Commission that the Project should be completed. (Tr. P. 528-29; P. 378, L. 4-9; P. 428, L. 2-9). They do not really dispute, then, the Uprate Project costs, they only take issue with the method of cost recovery for the Uprate Project. (Id.).

PEF's evidence demonstrates that its estimates of the Uprate Project costs are reasonable and consistent with accepted engineering practice and cost estimation methods. (Tr. P. 56-58). Similarly, the fuel savings estimates were calculated using reasonable utility estimation methods consistent with PEF and utility fuel forecasts. (Id.). Intervener witnesses conducted no independent analysis of their own of PEF's cost or fuel savings estimates. (Tr. P. 365, L. 6-19; P. 436, L. 18-22; P. 517, L. 7-13). OPC witness Merchant admitted that even though she was a CPA she could not provide the Commission with different cost estimates than what the Company provided and was not qualified to do so. (Tr. P. 436-38). OPC witness Lawton also did not do a separate cost estimate or independent analysis of the projected fuel savings. (Tr. P. 517, L. 7-13; P. 529, L. 2-4). In sum, there was no evidence suggesting that the Company's estimates of the Uprate Project costs and projected fuel savings were unreasonable or imprudent. [2]

Interveners did challenge the inclusion of costs addressing Point of Discharge ("POD") issues and the transmission costs in the CR3 Uprate Project. They argued that (1) these costs are too attenuated from the Uprate Project to be included in the Uprate Project costs, (Tr. P. 483, L. 13-16; P. 55-56), and (2) the cost estimates in any event are too uncertain to be included in the Uprate Project costs. (Tr. P. 483, L. 2-4; P. 56, L. 20-23). Both arguments lack merit.

Interveners again mistakenly emphasize the type of costs incurred rather than the relationship of those costs to the Project that results in fuel savings benefits to customers. It does not matter that costs addressing POD issues or transmission costs are not "fuel" costs and have

[2] Mr. Brew questioned what would occur if the costs turned out to be double the original estimate. (Tr. P. 283, L. 24 to P. 284, L. 1). Mr. Brew's speculation is, however, irrelevant; he had no basis to assume that PEF's cost estimates will increase so dramatically. What is relevant is that, at this point in time, PEF's estimates are demonstrably reasonable, (Tr. P. 56-58), and, as Mr. Portuondo pointed out in response to Mr. Brew's speculation, this Commission will review PEF's costs in any event for reasonableness and prudence when PEF seeks to recover the costs in each fuel docket proceeding. (Tr. P. 286, L. 9-19).

not been previously recovered through the Fuel Clause. What is relevant is that these particular costs are necessarily a part of the Uprate Project that is not part of PEF's current base rates but will provide fuel savings benefits to customers. For that reason, they are properly considered part of the costs recoverable through the Fuel Clause under item 10 of Order 14546.

The CR3 uprate results in more thermal megawatt generation and thus more heat that will increase the temperature of the cooling water discharged from the nuclear generation unit. (Tr. P. 49, L. 16-18). The POD cost estimate without question addresses the need for additional cooling capacity to address the cooling water temperature increase caused by the CR3 Uprate. (Tr. P. 56, L. 13-18). But for the CR3 Uprate these POD costs would not be incurred. (Id.). Likewise, upon completion of the CR3 Uprate, CR3 will be the single largest generation unit in Florida. (Tr. P. 48, L. 18-19). Solely as a result of that event, PEF must provide transmission support to ensure adequate generation on the Florida electric grid in the event the CR3 unit is lost for any reason. (Tr. P. 62, L. 7-22). If it were not for the CR3 Uprate PEF would not incur these transmission costs at all. (Tr. P. 56, L. 5-8). Both the POD and transmission costs, then, are directly caused by the CR3 Uprate and are therefore properly included in the CR3 Uprate Project costs.

The POD and transmission costs are admittedly subject to studies that will be completed by the end of the year. (Tr. P. 284, L. 12-19). They are also, however, based on reasonable plans to adequately address both the POD and transmission issues in ways that the full benefits of the CR3 Uprate can be achieved. (Tr. P. 57, L. 1 to P. 58, L. 12).

Indeed, with respect to the transmission cost estimate, PEF is conservatively using a plan that undoubtedly will address the need to replace CR3 should it go off line following the CR3 Uprate by installing a new 34 mile transmission line in North Florida. (Tr. P. 57, L. 3-7). This

cost estimate serves as the outer boundary for the costs that PEF might incur to address this transmission issue. (Tr. P. 62, L. 23-25). As a result, in the case of both the POD and transmission cost estimates PEF has used reasonable or conservative estimation methods. (Tr. P. 57, L. 1-20).

Finally, FIPUG suggested that the cost of the proposed transmission line should not be borne by PEF's customers because it will offset alleged transmission congestion that other utilities are experiencing in North Florida. (Tr. P. 218, L. 2-18). FIPUG relies on a reference to a 2005 North Florida Transmission Study in the Commission's Review of 2006 Ten-Year Site Plans for Florida's Electric Utilities (Hearing Exhibit 20).

FIPUG did not introduce in evidence the 2005 North Florida Transmission Study, FIPUG's witness did not address this Study in his testimony, and FIPUG undertook no discovery directed at this Study or its impacts, if any, on PEF.[3] There is no evidence that connects anything in this Study to PEF and its CR3 Uprate Project beyond the reference to the Study in the 2006 Ten-Year Site Plan review document. That reference provides, however, that "[f]or any identified transmission system additions, cost allocation could be an issue, as there might be uncertainty over which utility causes any system imbalances." (Hearing Exhibit 20, p. 21). There is no dispute that the transmission line PEF proposes to add in North Florida is intended only to address Florida Reliability Coordinating Council ("FRCC") requirements associated with CR3 becoming the largest single unit in Florida. (Tr. P. 56, L. 5-8; P. 518, L. 10-14). "Cost allocation" is not an issue, then, for PEF's proposed "transmission system addition" because it is

[3] As a result, PEF had no prior notice that anyone was claiming that the 2005 North Florida Transmission Study had any bearing on any issue in this proceeding. The fact that PEF's witnesses could not answer questions about the North Florida Transmission Study, then, is no surprise and is irrelevant to the issues that were raised in this proceeding. (Tr. P. 161, L. 15-20; P. 93, L. 13-18).

not being added to the North Florida transmission system to address "system imbalances." The 2005 North Florida Transmission Study is therefore irrelevant to this proceeding.

Because the CR3 Uprate Project will generate substantial fuel savings for the benefit of PEF's customers PEF has clearly met the second part of the Commission's test under item 10 of Order 14546. (Tr. P. 230, L. 1-5). Over the extended life of CR3 these fuel savings benefits are expected to exceed $2.6 billion which, at net present value, amounts to $640 million. (Id.). When these net savings are netted against the Project's costs, the resulting fuel savings benefits to customers are $320 million. (Tr. P. 133, L. 9-11).

Interveners cannot dispute that fuel savings will occur because of the CR3 Uprate Project. (P. 438, L. 23-24; P. 516, L. 20 to P. 517, L. 6; P. 365, L. 3-19). They simply suggest that the fuel savings might not be as much as PEF estimates because the later forecast years reflect trending of the benefits seen in the first eighteen years and they are, after all, forecasts. (Tr. P. 480, L. 4-8; P. 517, L. 3-6). As Mr. Waters explained, however, the net present value calculation greatly discounts fuel savings in the forecast's later years so that the fuel savings seen on a net present value basis --- here $640 million --- are more representative of fuel savings in the earlier years of the forecast. (Tr. P. 146, L. 21 to P. 147, L. 4). In other words, the net present value calculations account for any inherent unreliability in using forecasted fuel savings by giving greater weight to fuel savings in the early years of the forecast. (Id.). PEF's fuel savings forecasts are reasonable and consistent with electric utility practice including prior requests under item 10 of Order 14546. (Tr. P. 582, L. 5-12).

C. There Are No Additional Requirements or Tests under Item 10 of Order 14546 and Adding Any Such Requirements or Tests Undermines Commission Policy in Item 10.

The CR3 Uprate Project clearly meets the express test set forth in Item 10 of Order 14546. Interveners cannot dispute this, rather, they seek to add requirements or tests to determine if the CR3 Uprate Project costs are eligible for recovery under the Fuel Clause that are nowhere found in item 10. They argue the last sentence in item 10 that refers to a determination of recovery on a "case by case basis" means the Commission can consider whatever it wants when deciding whether to approve cost recovery through the Fuel Clause under item 10. (Tr. P. 366, L. 16-22; P. 422, L. 8-11; P. 499, L. 21 to P. 500, L. 1).

But that is not what the reference to the recovery of costs under item 10 on a "case by case basis" means. The full statement is: "Recovery of such costs should be made on a case-by-case basis after Commission approval." Order 14546 at 4. (emphasis added). The express "recovery" of "such costs" refers to the preceding sentence in item 10 setting forth the two-part test for the determination of recoverable costs under this item of Order 14546. The term "case-by-case basis," then, cannot be an open-ended invitation to add requirements to the ability to recover costs under item 10 of Order 14546 without rendering meaningless the express reference to the recovery of "such costs" in the same sentence. See Hawkins v. Ford Motor Co., 748 So. 2d 993 (Fla. 1999) (statutes and rules must be construed so as to render their provisions meaningful and not superfluous).

Instead, this sentence in item 10 was added to differentiate the costs recoverable through the Fuel Clause under item 10 from the costs recoverable through the Fuel Clause under items 1 through 9 of Order 14546. Costs identified in items 1 through 9, by the terms of Order 14546 itself, can be included by the utility in the development of their fuel expenses in the Fuel Clause without further Commission action. Order 14546 at 3-4. Costs under item 10 of Order 14546, however, cannot automatically be added to the utilities' fuel expenses, but must be added only

"after Commission approval," which necessarily must be done case-by-case to determine if the two-part test established by the Commission in item 10 of Order 14546 has been met.

If Interveners were correct one would expect to find some discussion of their additional requirements or tests in item 10 or in some later Order applying item 10 of Order 14546. Intervener witnesses must admit, however, that none of the additional requirements or tests they suggest the Commission should impose on PEF's request are expressly stated in item 10. (Tr. P. 369-70; 423-24; 500-501). They must also admit that they cannot point to a single Commission Order applying Item 10 in which the Commission considered any of their additional requirements or tests. (Tr. P. 368, L. 9-22; P. 425, L. 4-9; P. 509, L. 9-13). No additional requirements or tests can be found in item 10, or in any application of item 10 by the Commission, because adding requirements or tests to item 10 defeats the Commission's purpose of establishing a clear, straight-forward test to encourage utility projects like the CR3 Uprate Project that result in substantial fuel savings to customers. (Tr. P. 558, L. 17 to P. 559, L. 2).

Order 14546 resulted from the Commission's direction to investor-owned utilities and other interested parties to consider the types of costs appropriate for Fuel Clause recovery. The parties did this and in fact "agreed to a policy addressing the appropriate prospective means of recovering such fossil fuel-related expenses." Order 14546 at 1. This policy is reflected in items 1 through 10 of Order 14546, where the Commission states: "As a result of our determinations in this proceeding, *prospectively*, the following charges are properly considered in the computation of the average inventory price of fuel used in the development of fuel expenses in the utilities' fuel cost recovery clauses." Id. at 3 (emphasis added). Thus, Order 14546 is a policy of general applicability, which has the force of a rule, because it applies prospectively to all utilities. §120.52(15), Fla. Stats. Intervener witnesses do not dispute that the Commission established a

policy of general applicability in Order 14546, including item 10 of that Order. (Tr. P. 505, L. 9-12).

As a policy of general applicability, the Commission should apply item 10 of Order 14546 uniformly and consistently to all utilities. Applying the policy uniformly to all parties governed by the policy achieves basic fairness. See Martin Memorial Hosp. Assoc. v. Dept of Health and Rehabilitative Svcs., 584 So. 2d 39, 40 (Fla. 4th DCA 1991) ("agency action which yields inconsistent results based upon similar facts, without reasonable explanation, is improper."); See also North Miami General Hosp., Inc. v. Office of Community Medical Facilities, 355 So. 2d 1272, 1278 (Fla. 1st DCA 1978) (holding that "inconsistent results based upon similar facts, without a reasonable explanation, violate not only express provisions of the Administrative Procedure Act (Chapter 120, F.S.), but are violative of the equal protection guarantees of both the Florida and United States Constitutions."). Likewise, applying an agency policy in a consistent and uniform manner provides certainty to agency policy and to those who are expected to follow that policy. (Tr. P. 305, L. 5-13).

As Commissioner Carter pointed out at the hearing, if the Commission is "going to incentivize the industry to go forth and do great things and provide savings for the ratepayers" utilities must know what is expected of them to be entitled to the incentive. (Tr. P. 536, L. 10-15). The simple, straight-forward, two-part test of item 10 that the Commission has consistently applied does just that, it provides utilities the incentive to invest in projects that result in substantial fuel savings benefits to customers. That's why PEF invested the time and effort to pursue the CR3 Uprate Project. (Tr. P. 247, L. 9-19). To allow interveners to add to the requirements of item 10 departs from the clear, express requirements of item 10 and past application of those requirements resulting in an unfair and uncertain application of Commission

policy. The result will discourage, not encourage, utility projects that achieve fuel savings and reduce customer costs.

Turning to each of the additional requirements or tests suggested by Interveners, the evidence is clear that they cannot be found in item 10, or any application of the policy under item 10 of Order 14546, and they defeat the incentive behind that policy.

1. *There is no Earnings Test under Item 10 of Order 14546.*

Interveners argue for what is essentially an earnings test, meaning that if a utility is earning what is in their view an adequate return such that project costs can be absorbed by base rates, Fuel Clause recovery under item 10 of Order 14546 should be denied. (Tr. P. 353-54; 401-402; 463-64). Both Mr. Lawton and Mr. Pollock argue that, based on recent PEF surveillance reports, PEF will be able to or should absorb the CR3 Uprate Project costs in base rates, especially Phase I costs. (Tr. P. 353-54; 458-59). Intervener witnesses concede, however, that no "earnings" test of any type is even mentioned in Order 14546. (Tr. P. 424, L. 15-18; P. 504, L. 25 to P. 505, L. 2). There is no requirement under item 10 of Order 14546 that a utility prove it is incapable of recovering project costs through base rates without adversely affecting its allowable return on equity. (Id.; Order 14546).

Interveners' comparison of *past* Company surveillance reports to *future* project costs to argue that the future project costs will be adequately covered by base rates is improper and misleading.[4] Past surveillance reports are no indication of the ability of the utility to absorb future project costs in base rates without affecting earnings. (Tr. P. 563, L. 20 to P. 564, L. 9).

[4] Staff attorneys also questioned Mr. Portuondo about a recent press release regarding PEF's 2007 second quarter earnings. (Tr. P. 628-30). Again, past earnings are not indicative of the ability to absorb future CR3 Uprate costs in base rates without impacting earnings. Moreover, such an inquiry is irrelevant to a determination of Fuel Clause recovery under Item 10 of Order 14546.

Indeed, a determination of what earnings are appropriate must take into account all utility costs and revenues in the same time period, which of course, is exactly what a base rate proceeding does. The Commission, of course, did not use an earnings test in Order 14546 because it would have turned a request for Fuel Clause recovery into a complex base rate inquiry, defeating the Commission's purpose of establishing a straight-forward test to encourage projects like the CR3 Uprate Project. (Tr. 593, L. 21-25).

2. *There is no Future Base Rate Inquiry under Item 10 of Order 14546.*

Interveners also argue that, because the costs for Phases 2 and 3 will be incurred at or after PEF has an opportunity to initiate another base rate proceeding, the CR3 Uprate Project costs are more appropriate for base rate recovery than Fuel Clause recovery. (Tr. P. 401, L. 1-13; P. 468 L. 20 to P. 469, L. 17). OPC witness Ms. Merchant argues that PEF's ability to initiate such a base rates proceeding eliminates the "regulatory lag," which she claims is what item 10 of Order 14546 was designed to prevent. (Tr. P. 400, L. 7-16).

But, again, there is no requirement in item 10 of Order 14546 that the utility must show that project costs are not recoverable in *future* base rates to obtain recovery of the project costs through the Fuel Clause. Instead, the Commission required the utility to demonstrate that the project costs are not recognized or anticipated in *current* base rates. Order 14546 at 4; In re: Fuel and Purchased Power Cost Recovery Clause with Generating Performance Incentive Factor, Order No. PSC-05-1252-FOF-EI, Docket No. 050001-EI (Dec. 23, 2005). The intent was to protect against possible double recovery, not to eliminate regulatory lag. (Tr. P. 566, L. 5-10).

PEF has the right to initiate a base rate proceeding, even under the rate case settlement agreement, to include costs in base rates, if PEF's return falls below a certain level. (Tr. P. 566, L. 11-14). Indeed, a utility always has the right to put costs through base rates. (Id.). The

Commission knew this when it adopted item 10 of Order 14546 and the Commission knew this in every case that came before it under item 10. It knew that such a requirement would mean that no projects would ever be recovered through the Fuel Clause, no matter what the net savings were. (Tr. 594, L. 11-17). For these reasons, the Commission does not require a utility to demonstrate that the recovery of project costs through the Fuel Clause under item 10 could not be recovered in future base rates in Order 14546 or in any Order applying item 10.

3. *There is no Project Size Requirement, De Minimus or Otherwise, in Item 10 of Order 14546.*

Interveners, of course, must acknowledge that the Commission approved Fuel Clause recovery under item 10 of Order 14546 for the costs of FPL's nuclear uprate. (Tr. P. 404, L. 17-21; P. 468, L. 13-15; Order No. PSC-96-1172-FOF-EI). OPC witness Mr. Lawton in fact agreed that the Commission properly applied item 10 of Order 14546 to FPL's request for Fuel Clause recovery of its nuclear uprate costs. (Tr. P. 514, L. 5-13). To avoid application of this precedent to PEF's request, however, Interveners read another, non-existent requirement into Item 10. They argue that the size of the project's costs is determinative, and urge the Commission to reject PEF's petition for recovery of its uprate costs through the Fuel Clause because FPL's uprate costs were de minimus by comparison. (Tr. P. 404-405; P. 468, L. 13-17).

All of the Intervener witnesses admitted, however, that Order 14546 does not expressly include any size requirement. (Tr. P. 423, L. 24 to P. 424, L. 1; P. 504, L. 19-24). And, while PEF certainly acknowledges that the CR3 Uprate costs are higher than the costs of any project the Commission previously approved for cost recovery through the Fuel Clause pursuant to Order 14546 -- including FPL's nuclear uprate project (Tr. P. 313, L. 17-22) -- the fuel savings that the CR3 Uprate Project will generate are also substantially higher. (Id.). To illustrate this

point, Hearing Exhibit 28, comparing projects previously approved for Fuel Clause recovery under item 10 to PEF's CR3 Uprate project, is included below:

Prior Application of Item 10 under Order No. 14546

Company	Order No.	Date	Project Description	Project Cost	Amortization Period	Estimated Savings Over Recovery Period	Ratio of Savings to Costs Over Recovery Period
FPL	PSC-96-1172-FOF-EI	09/19/96	Thermal Uprate of Turkey Point units 3 & 4	$10 million	2-years	$18.7 million	1.9
FPC	PSC-97-0359-FOF-EI	03/31/97	Conversion of peaking units to natural gas (DeBary 7, Bartow 3 & 4, Suwannee 1)	$7.5 million	5-years	$22 million	2.9
FPC	PSC-96-0353-FOF-EI	03/13/96	Conversion of combustion turbine units to natural gas (Intercession City CT units P8 and P10)	$2.6 million	5-years	$16 million	6.2
FPC	PSC-95-1089-FOF-EI	09/05/95	Conversion of combustion turbine units to natural gas (Intercession City CT units P7 and P9)	$2.5 million	5-years	$20 million	8.0
FPC	PSC-98-0412-FOF-EI	03/20/98	Conversion of Suwannee 3 to natural gas	$2.45 million	5-years	$3.25 million	1.3
PEF			CR3 Uprate Project	$381.8 million	10-years	$1,020.2 million	2.7

Source: Relevant Orders per Javier Portuondo July 19, 2007 Rebuttal Testimony, pages 20-21.

As Mr. Portuondo explained, when comparing the ratio of project savings to project costs, the CR3 Uprate Project ratio is in line with the ratios for the other, previously-approved projects. (Tr. P. 290, L. 1-18). And, as he further explained, the CR3 Uprate Project is projected to generate 57 times greater savings than the FPL nuclear uprate project that was approved, and 46, 64, 51, and 314 times greater savings than the Combustion Turbine ("CT") conversion projects, respectively, that were approved. (Tr. P. 334, L. 17-25). The point is, comparing just the CR3 Uprate costs to the costs of the other, previously-approved projects ignores the fuel savings benefits from the projects. When the fuel savings from the projects are compared the justification for recovery of the CR3 Uprate Project through the Fuel Clause is clear.

The Commission, of course, imposed no ceiling on the project costs eligible for cost recovery through the Fuel Clause under Item 10. In fact, item 10 makes no reference to the amount of the project's costs at all. The Commission, however, did make clear in item 10 that the expected generation of fuel savings was critical to Commission approval of the project costs

through the Fuel Clause. Order 14546 at 4. It is difficult to imagine, then, that the Commission intended to encourage only small projects with small fuel savings benefits to customers in item 10. Certainly, the Commission created no such limitation in item 10 or any subsequent Order applying item 10 of Order 14546.

The point is, as Mr. Portuondo explained, the fundamental principles that were used to approve the smaller cost, smaller savings projects apply equally to larger cost, and substantially larger fuel savings projects like the CR3 Uprate Project. (Tr. 612, L. 20-25, 613, L. 1-15). The utilities would have contemplated and planned these projects, whether or not recovery was through the Fuel Clause or through base rates, and all parties and the Commission were monitoring the utilities' earnings through earnings surveillance reports. (Id.). The projects are all capital investments in generating facilities, with useful lives longer than the recovery periods, that, if undertaken, created fossil fuel savings far greater than the costs that must be incurred to achieve those fuel savings. (Id.). The goal for all of these projects, then, was "holding the customer harmless because you're able to fund the recovery of the project costs with achieved fuel savings." (Tr. P. 611, L. 22-24). That goal is the essence of the Commission's policy under item 10 of Order 14546.

4. *There is No Requirement in Item 10 of Order 14546 that the Project must be a Short Term Opportunity.*

Interveners also argue that, to qualify for cost recovery through the Fuel Clause under Item 10, the project must be a short-term opportunity. (Tr. P. 421, L. 4-12). To support this argument, they point to an example in Order 14546 explaining that a short-term lease of a terminal to obtain a shipment of low cost oil qualifies under Item 10. (Id.). Because the CR3 Uprate is not a short term opportunity, Interveners assert, the CR3 Uprate Project cannot qualify for cost recovery under Item 10. (Tr. P. 427, L. 16 to P. 428, L. 9).

First, item 10 of Order 14546 contains no such limitation. Order 14546 at 4. If the Commission had intended to limit recovery under item 10 to short term opportunities to achieve fuel savings it would have been easy enough for the Commission to say so, especially since the Commission had just used a short term opportunity as an example of a project that qualified for such recovery. (Order 14546 at 3). But the Commission did not.

Second, this short-term terminal lease was merely one example of a project that qualified for cost recovery under item 10 and was not intended to exhaust all projects that possibly qualified under Item 10. (Order 14546 at 3). It was, as Mr. Portuondo explained, just an example. (Tr. P. 299, L. 2-19).

Finally, no such limitation was ever applied to any request for recovery under item 10 in the Commission's subsequent orders. There was no discussion at all regarding whether the project was or was not a short term opportunity in the subsequent orders applying item 10. See Order No. PSC-98-0412-FOF-EI; Order No. PSC-97-0359-FOF-EI; Order No. PSC-96-0353-FOF-EI; Order No. PSC-95-0450-FOF-EI; Order No. PSC-95-1089-FOF-EI and Order No. PSC-94-1106-FOF-EI. Indeed, in the 2001 fuel docket, all parties --- including OPC and FIPUG --- stipulated that "the appropriate regulatory treatment for capital projects with an in-service date on or after January 1, 2002 that are expected to reduce long-term fuel costs is the treatment prescribed by the Commission" in item 10 of Order 14546. See Order No. PSC-01-2516-FOF-EI, Docket No. 010001-EI (Dec. 26, 2001) (emphasis added). The Commission approved this stipulation as reasonable. (Id.). The Commission would not have done so if item 10 of Order 14546 was in fact limited to projects that reduced "short term" fuel costs.

Every project approved by the Commission for cost recovery through the Fuel Clause under item 10 shown in Hearing Exhibit 28 (see p. 20 above), is in fact a long-term opportunity

for fuel savings. (Tr. P. 335, L. 6-14). So is the CR3 Uprate Project. (Tr. P. 297, L. 9-16). Because the undisputed Commission policy under item 10 is to encourage "creativity" and to "incentivize" utilities to develop projects that result in fuel savings benefits for customers, (Tr. P. 529-30), it is difficult even to imagine that the Commission intended to deny Fuel Clause recovery for projects that produced fuel savings for customers for too long a period of time. The Commission certainly has never imposed such an improvident limitation on a project approved for cost recovery through the Fuel Clause under item 10 of Order 14546.

D. PEF's Petition is Consistent with its 2005 Rate Case Settlement Agreement.

Only FIPUG witness Mr. Pollock argues that PEF's request for cost recovery in its Petition violates PEF's 2005 rate case settlement agreement. (Tr. P. 345-48). Mr. Pollock argues that PEF's request is for a new surcharge that is prohibited by the settlement agreement. (Tr. P. 346, L. 6-20). Mr. Pollock is wrong.

The settlement agreement was not intended to preclude Fuel Clause recovery for costs that properly qualify for such recovery, including costs that qualify for such recovery under item 10 of Order 14546. (Tr. P. 584, L. 1-3). Indeed, paragraph 14 of the settlement agreement contemplates a return on equity for costs recovered through clauses at exactly the return PEF seeks in this proceeding. (Tr. P. 584, L. 3-6). Moreover, the settlement agreement nowhere references Order 14546 at all so the agreement certainly does not expressly prohibit Fuel Clause recovery of costs incurred pursuant to Commission policy in item 10 of Order 14546. (Tr. P. 371, L. 8-15).

Order 14546 was issued in 1985, well before the settlement agreement was signed in 2005, but the parties did not include any reference to item 10 of Order 14546. (Tr. P. 584, L. 9-13). If the parties intended to explicitly preclude Fuel Clause recovery under item 10 of Order

14546 in the settlement agreement they certainly could have said so. The fact that they did not indicates there was no intention to preclude PEF from recovering costs through the Fuel Clause that properly qualified for such recovery under item 10 of Order 14546. See Home Development Co. of St. Petersburg v. Bursani, 178 So. 2d 113, 117 (Fla. 1965) (holding that if the parties intended a certain provision, "it would have been a simple matter . . . to have said so. The fact that they did not indicates an intention to exclude such a provision.").

Finally, the Company's request for Fuel Clause recovery for the CR3 Uprate Project costs is not really a "surcharge" at all, because the fuel savings will in effect pay for the project. (Tr. P. 584, L. 16-23). The Company proposes to only recover Uprate Project costs to the extent that fuel savings are demonstrated each year it seeks to recover its costs, deferring any costs in excess of the fuel savings in a particular year to the next year. (Id.). As a result, customer bills will remain the same or even go down (in years where the fuel savings exceed the costs), because of the Uprate Project. (Id.). So, the Uprate Project costs, when included in the fuel factor on customer bills, do not result in surcharges at all because of the effect of the netting of costs to fuel savings. Thus, the Company's request cannot violate the settlement agreement in any event.

E. PEF's Cost Recovery Proposal is Consistent with Prior Projects Approved by the Commission for Fuel Clause Recovery Under Item 10 of Order 14546.

The Company's proposal for recovery of the CR3 Uprate Project costs through the Fuel Clause is modeled on and entirely consistent with the Commission's approval of cost recovery for prior projects under item 10 of Order 14546. (Tr. P. 573-576). PEF requests recovery through the Fuel Clause of the amortization of capital costs and a return on capital at the current pretax weighted average cost of capital ("WACC") of the CR3 Uprate Project costs, amortized over a period for which the demonstrated fuel savings exceed the amortization and pretax WACC of the CR3 Uprate Project. (Tr. 591, L. 18-23, Tr. 592, L. 1-2). PEF simply seeks the

same treatment for the CR3 Uprate Project costs that the Commission approved for other projects under item 10. See Order No. PSC-98-0412-FOF-EI; Order No. PSC-97-0359-FOF-EI; Order No. PSC-96-0353-FOF-EI; and Order No. PSC-95-1089-FOF-EI.

Interveners object to PEF's proposed manner of cost recovery. In particular, they object to (1) the recovery of project costs over an amortized period where demonstrated fuel savings offset the project costs and (2) the recovery of the WACC to the extent it includes the Company's authorized return on equity. (Tr. P. 408, L. 10 to P. 410, L. 17; P. 469-474; P. 476-478). Both objections are inconsistent with Commission practice under item 10 and the Commission's policy under item 10 to provide incentives for projects like the CR3 Uprate Project.

1. *An Amortized Recovery Period where Fuel Savings Offset Project Costs is Consistent with Commission Practice and Policy, and Does Not Harm Customers.*

PEF's proposal is to recover the CR3 Uprate Project costs each year following commercial operation of each successive phase of the CR3 Uprate Project to the extent there are demonstrated fuel savings to cover the costs. If the fuel savings do not exceed Project costs in any particular year, collection of those costs will be deferred to the next year, and so on, until the fuel savings offset Project costs. (Tr. P. 584, L. 16-23).

PEF currently expects to recover Phase 1 costs, the Measurement Uncertainty Recapture ("MUR"), in the first year of MUR commercial operation in 2008, because fuel savings are projected to exceed the MUR costs. (Tr. P. 615, L. 8-22). The remaining costs of Phases 2 and 3 of the Uprate Project are currently expected to be recovered in a ten-year period because fuel savings are projected to exceed Project costs by the end of that period. (Tr. P. 616, L. 3-13). Over the course of that estimated ten-year period there may be individual years where fuel savings exceed Project costs to be collected resulting in net fuel savings benefits to customers.

(Tr. P. 617, L. 1-3). As actual Uprate Project costs are incurred and fuel savings are calculated, however, the length of the recovery period may increase some or decrease. (Tr. P. 616, L. 3-9).[5] For example, if Project costs are lower than currently estimated or if oil and natural gas prices are higher in the future than projected, the recovery period will be shorter. (Tr. P. 578, L. 17 to P. 579, L. 12).

Various Interveners claim that (1) the CR3 Uprate Project costs should be recovered over the extended useful life of CR3; (2) the accelerated recovery period violates principles of the Uniform System of Accounts ("USAO"); and/or (3) a shortened recovery period results in intergeneration inequity and harms PEF's customers. (Tr. P. 408, L. 10 to P. 410, L. 17; P. 469-474). These arguments also lack merit.

First, in prior applications of Commission policy under Item 10 of Order 14546 the approved recovery period has coincided with the demonstrated fuel savings and not the useful life of the capital project. (Tr. P. 574, L. 17-18). For example, in Order Number PSC-96-1172-FOF-EI, the Commission approved the recovery of FPL's nuclear uprate costs through the Fuel Clause over a period of two years, even though the fuel savings were projected out to 2011 and the capital changes had an expected useful life of at least 15 years. These nuclear units, Turkey Point Units 3 and 4, in fact have extended licenses through 2032 and 2033, respectively. (Tr. P.

[5] Interveners imply that PEF concealed information about the actual cost recovery period because the estimated ten-year recovery period was not in its testimony or Petition. (Tr. P. 406, L. 17 to P. 407, L. 3). To the contrary, beginning with the Petition and in testimony PEF has consistently said it expects to recover costs to the extent of demonstrated fuel savings. (Tr. P. 579, L. 1-12). PEF has always made clear, then, that the actual cost recovery period will vary depending on actual Project costs and fuel savings levels. (Id.). The anticipated ten-year recovery period that Interveners latch onto is a demonstrative tool to show the cumulative effect of the fuel savings over an estimated recovery period. (Tr. P. 578, L. 17-23). The actual recovery period, of course, may and likely will change over time. (Tr. P. 579, L. 1-7).

574, L. 22 to P. 575, L. 1). In that prior nuclear uprate case, then, the capital costs were recovered over a two-year period but the useful life of the units is about 36 years each.

Additionally, the capital costs for each of the CT conversion projects were recovered through the Fuel Clause under item 10 of Order 14546 over a five-year period even though the combustion turbines typically have a depreciable life of around 30 years. See Order No. PSC-98-0412-FOF-EI (conversion of Suwannee Unit 3, which was placed into service in 1980); Order No. PSC-97-0359-FOF-EI (conversion of DeBary 7, Bartow 3 and 4, and Suwannee 1, with DeBary 7 being placed into service in 1992); Order No. PSC-96-0353-FOF-EI (conversion of Intercession City P8 and P10); and Order No. PSC-95-1089-FOF-EI (conversion of Intercession City P7 and P9, which were placed in service in 1993). Again, the Commission has consistently approved recovery periods under item 10 of Order 14546 that coincide with the demonstrated fuel savings, not the useful lives of the capital projects. [6]

Indeed, in Order No. PSC-98-0412-FOF-EI, the Commission explained: "If the fuel savings during any annual period are less than the amortization and return costs, [PEF] shall limit cost recovery to actual fuels savings and defer recovery of the difference to future periods." Docket No. 980001-EI (Mar. 20, 1998). This is precisely what PEF proposes to do in this proceeding.

Second, the Commission can modify or waive application of USAO requirements. (Tr. P. 576, L. 7-10). OPC witness Mr. Lawton admitted that the Commission can waive these requirements. (Tr. P. 515, L. 5-10). This is, of course, exactly what the Commission has done each time it approved a request for recovery of project costs through the Fuel Clause over an

[6] In Order Number PSC-94-1106-FOF-EI, the parties, including OPC, stipulated to a different, albeit accelerated recovery period than what had been previously approved by the Commission. The recovery period approved was still shorter than the useful life of the capital project.

amortized period less than the useful life under item 10 of Order 14546. See Order No. PSC-98-0412-FOF-EI; Order No. PSC-97-0359-FOF-EI; Order No. PSC-96-1172-FOF-EI; Order No. PSC-96-0353-FOF-EI; Order No. PSC-95-1089-FOF-EI; and Order No. PSC-94-1106-FOF-EI. The Commission, therefore, similarly can waive or modify USAO requirements by approving an amortized recovery period with respect to the CR3 Uprate Project.

Finally, Interveners claim intergeneration inequity will result if PEF's request is approved because customers will not see net fuel savings benefits for ten years. (Tr. P. 470, L. 17 to P. 471, L. 4). This is not entirely true because the MUR phase is expected to produce net fuel savings benefits to customers in the very first year of commercial operation. (Tr. P. 577, L. 4-8). There may also be years after Phases 2 and 3 are completed and operational where there may be small net fuel savings benefits to customers. (Tr. P. 617, L. 1-3). It is inaccurate, therefore, to claim as Interveners do that current customers will receive no net fuel savings benefits.

Current customer bills will further reflect fuel savings every year after commercial operation of the three-phase Uprate Project. Those fuel savings will just be used to offset the Project costs. Customer bills will remain the same or they will be lower (all other things being equal), so there is no real cost to current, or future customers for that matter, for the Uprate Project. (Tr. P. 577, L. 1-15). This is not a case, then, where current customers are paying for something that will not produce benefits until some future point in time. The Uprate Project costs will be paid by the fuel savings. (Tr. P. 577, L. 12-15). That will benefit current and future customers.

It is true that, because PEF will recover costs to the extent of fuel savings, at the end of that recovery period, customers will receive all the fuel savings benefits. (Id.). But this result occurred to one extent or another in every other project the Commission has approved under

Item 10 of Order 14546. Even Mr. Lawton recognized the same type of intergenerational inequity was created when a two-year recovery period was approved for FPL's nuclear uprate even though the fuel savings extended for at least 15 years. (Tr. P. 511, L. 15-25). See Order No. PSC-96-1172-FOF-EI. The Commission therefore has been willing to accept some delay in net savings to current customers to encourage projects that benefit all customers with substantial overall savings. (Tr. 595, L. 18-24).

Indeed, the significance of Interveners' concern is overstated. As Commissioner Carter pointed out, Florida is a highly mobile, highly vibrant society with over a thousand people a day moving to Florida. So, there will always be a different group of customers at any given point in time. (Tr. 535, L. 22-25, 536, L. 1-9).

Finally, an amortized recovery period benefits both the utility and customers. Certainly, an accelerated recovery period advances the Commission policy under item 10 of providing an incentive to utilities to find and develop fuel-savings projects. (Tr. P. 575-76). By allowing utilities to recover project costs over the same time period in which fuel savings pay for the project, utilities receive increased cash flow that allows them to re-deploy resources to fund other projects. (Tr. P. 606, L. 12-14). For customers, if cost recovery is deferred over the useful life of the project, which typically is the case in base rate recovery, the total net savings may not be as large over the life of the project compared to the shorter, accelerated recovery of costs offset by fuel savings. As Mr. Portuondo explained, "The reason for that is, just like with a home loan or a mortgage, if you pay it off in 30 years, that's going to cost you more than paying it off in 15 years or in 10 years." (Tr. 606, L. 2-5). In the end, then, the amortized recovery period is a "win-win" for the utility and its customers. (Tr. 305, L. 14-21).

2. *Recovery of the WACC is Consistent with Commission Policy and Practice under item 10 of Order 14546.*

PEF proposes to recover its weighted average cost of capital ("WACC"), which includes its allowed return on equity for capital projects recovered through cost recovery clauses under its rate case settlement agreement, for the CR3 Uprate Project. (Tr. P. 573-74; P. 584, L. 3-6). Interveners claim this return on equity is inappropriate because cost recovery through the Fuel Clause is in their view "guaranteed" and "risk free." (Tr. P. 508, L. 5-10). Interveners are wrong and their position is inconsistent with Commission practice and the accepted Commission policy under item 10 of Order 14546 of encouraging projects that generate fuel savings benefits for customers.

OPC witness Lawton, in particular, repeatedly argued that Fuel Clause recovery for the CR3 Uprate Project costs was inappropriate because, in his view, PEF's return on equity would be "guaranteed" and "risk free" through the Fuel Clause. He claimed base rate recovery was more appropriate because PEF only had an "opportunity" to earn its return in base rates. (Tr. P. 522, L. 22 to P. 523, L. 9). This argument is a "red herring," as Commissioner Carter recognized, for several reasons. (Tr. P. 523, L. 23).

First, even Mr. Lawton had to concede that PEF would earn a return on its investment regardless of the method of cost recovery. (Tr. P. 523, L. 19-22). And, as Mr. Portuondo further explained, in base rates PEF has the opportunity to earn more than its current authorized Fuel Clause return of 11.75%. (Tr. P. 608, L. 3-6).

Second, the current authorized return for Fuel Clause recovery of 11.75% is not guaranteed over the entire course of the CR3 Uprate Project. Based on prior Commission practice, the equity return authorized in the cost recovery clauses will change when the equity return changes in base rates. (Tr. P. 595, L. 8-14).

Finally, cost recovery through the Fuel Clause is subject to Commission review for reasonableness and prudence. (Tr. P. 314, L. 21-24). Full recovery of costs and an established return is, therefore, certainly not "guaranteed" or "risk free." (Tr. P. 607, L. 14-21).

In fact, Commission practice in cost recovery approvals for projects under item 10 is to allow the utility to recover its WACC. In the FPL uprate case, FPL was authorized to recover 9.2897%, which was FPL's then-current WACC. Order No. PSC-96-1172-FOF-EI at p. 9. When FPC received approval for cost recovery through the Fuel Clause for the conversion of its Intercession City combustion turbine units P7 and P9, the Commission allowed a return of 8.37%, which was the last approved return authorized in FPC's last rate case. Order No. PSC-95-1089-FOF-EI at p. 13. See also Order No. PSC-98-0412-FOF-EI; Order No. PSC-97-0359-FOF-EI; Order No. PSC-96-1172-FOF-EI; Order No. PSC-96-0353-FOF-EI; and Order No. PSC-94-1106-FOF-EI.

This is not a controversial practice. In the 2001 fuel docket, all parties --- including OPC and FIPUG --- stipulated that "the appropriate regulatory treatment for capital projects with an in-service date on or after January 1, 2002 that are expected to reduce long-term fuel costs is the treatment prescribed by the Commission" in item 10 of Order 14546 and that "the appropriate rate of return on the unamortized balance of [such capital projects] . . . is the utility's cost of capital based on the midpoint of its authorized return on equity." See Order No. PSC-01-2516-FOF-EI, Docket No. 010001-EI (Dec. 26, 2001) (emphasis added). All parties there recognized that recovery of the WACC was a necessary component of encouraging capital projects that were expected to reduce long-term fuel costs under item 10 or else they would not have stipulated to it. Likewise, the Commission would not have found the stipulation reasonable if the Commission believed the WACC was an inappropriate rate of return.

If the utility is not allowed to earn a rate of return on its investment there will be no incentive for utilities to propose projects solely because they generate fuel savings benefits. The Commission's policy under item 10 of Order 14546 will therefore be frustrated. (Tr. P. 574, L. 9-11). Mr. Lawton in fact agrees the Company has a fiduciary duty to its shareholders. (Tr. P. 547, L. 1-4). He further agrees most of those shareholders are long-term stockholders who buy PEF's stock for the dividend. (Tr. 521, L. 20-22). Those shareholders, therefore, are looking for a return on equity and if they do not get it they will invest elsewhere. As Mr. Portuondo explained, the Company likely will not be able to obtain equity for the CR3 Uprate Project if PEF is limited to recovering all costs at 100 percent of its debt rate as Mr. Lawton proposes. (Tr. 599, L. 13-17; P. 507, L. 14 to P. 508, L. 15). There is no incentive, then, to do the CR3 Uprate Project under Mr. Lawton's "all debt-rate" proposal. In fact, there is a disincentive to do the Project. That is contrary to the admitted policy purpose of Item 10. (Tr. P. 529-30; P. 428, L. 19 to P. 429).

F. The Policy in Item 10 of Order 14546 is Needed to Encourage Projects that Primarily Provide Fuel-Savings Benefits to Customers.

Interveners agree that item 10 of Order 14546 was designed to encourage utilities to invest in projects with the purpose of generating fuel savings benefits to customers. (Tr. P. 529-30; P. 428, L. 19 to P. 429). They agreed that item 10 "was meant to encourage utilities to spend money that they might not otherwise choose to spend to save fuel costs." (Tr. P. 428, L. 10 to P. 429, L. 2). PEF relied on the policy the Commission developed in item 10 and in subsequent orders applying item 10. (Tr. P. 558, L. 9-16). The policy works. PEF developed the CR3 Uprate Project, which will increase nuclear generation and provide substantial fuel savings to its customers, because of the incentive in the policy under item 10. (Id.).

Interveners argue, nevertheless, that PEF should do this project even without Fuel Clause recovery. (Tr. P. 528-29; P. 378, L. 4-9; P. 428, L. 2-9). They assert all new generation units create fuel savings by displacing some energy from less efficient, more expensive existing generation units. (Tr. P. 415, L. 12-18). They and Staff questioned PEF regarding changes in the Company's Ten-Year Site Plans ("TYSP") before and after the CR3 Uprate Project. (Tr. P. 194-213; P. 163-174). Their apparent claim is that the CR3 Uprate Project is meeting a reliability need by contributing to the Company's capacity reserves. (Tr. P. 374, L. 9-18). For these reasons, PEF, in their view, does not need any incentives to do the CR3 Uprate Project. They contend that PEF is obligated as a regulated public utility to do this Project anyway. (Tr. P. 528-29; P. 378, L. 4-9; P. 428, L. 2-9).

All of these arguments ignore the realities PEF faces. If PEF is denied Fuel Clause recovery for the CR3 Uprate Project, the Project must then compete with other projects and the Company's normally recurring expenses for the revenues available to the Company from base rates. (Tr. P. 262-63). The Company takes its obligations as a regulated public utility seriously, but the Company does not have endless funds or access to endless funds to maintain safe, reliable electric service for its customers. (Id.). Its first priority is to make sure the current system providing customers electric service today is operating efficiently and properly maintained. PEF also must meet expanding customer growth and demand on its system with additional resources. As Mr. Portuondo explained, "[w]e can't just look at this project in isolation. There's ... limitations to how much indebtedness, how much equity the utility can go after in any one year to pursue the necessary bread-and-butter type projects. This is one of those projects that has to compete alongside with making sure that the system hardening is accomplished correctly on schedule, that the power plants are operating efficiently and humming

and providing reliable service to our customers. .... I mean, we've got – you know, CAIR is a billion dollars. We've got future base load needs. ... So I think we have to look at it holistically." (Tr. P. 315, L. 25 to P. 316, L. 1-20). The Company cannot say whether the CR3 Uprate Project can be done through base rates after meeting these other priorities to keep the current system operating reliably and meeting future load growth. (Tr. P. 263, L. 6-9).

The Company has added the CR3 Uprate Project to its 2007 TYSP, after the need determination was granted by the Commission. (Tr. P. 586, L. 2-17). But that need determination was granted based on an economic – i.e., fuel savings – need, not a reliability need. See Order No. PSC-07-0119-FOF-EI. The 2006 TYSP (and prior TYSPs) does not include the CR3 Uprate Project because other generation projects -- Hines 4 and the Bartow Repowering project -- were already planned to meet the growth in load in the same time period as commencement of the CR3 Uprate Project before the CR3 Uprate Project was developed. (Tr. P. 214, L. 2 to P. 215, L. 6).

These new generation projects (Hines 4 and Bartow) will have a revenue stream from increased customer growth and demand to at least partially offset their costs. (Tr. P.311, L. 7-18). The fact that the CR3 Uprate Project, if added to the system, will contribute to capacity reserves as indicated in the 2007 TYSP, however, does not mean there are additional revenues from increased customer growth and demand to offset the CR3 Project costs. Unlike Hines 4 and Bartow repowering, the CR3 Uprate Project does not have a corresponding revenue stream. (Tr. P. 311, L. 3-15). The basis for recovery of the CR3 Uprate Project costs were the fuel savings, which can be used to fund the Project without including it in base rates, and still have substantial fuel savings left after the Project costs are paid for the benefit of customers. (Id.; Tr. P. 230, L. 1-5).

The same cannot be said for Hines 4, Bartow repowering, or other, typical generation additions to meet load growth. As Mr. Waters explained, for these generation projects whatever fuel savings are achieved from adding new, more efficient generation units to the system will not offset the costs of the generation units. (Tr. P. 214, L. 2 to P. 215, L. 6). That's what makes the CR3 Uprate Project unique, the expected fuel savings from the project will in fact far exceed the costs of the Project. (Tr. 625, L. 24-25, 626, L. 1-9).

This, of course, is the second part of the test under item 10 of Order 14546. (Id.; Order 14546 at 4). As Mr. Portuondo explained, item 10 "helped to provide cost recovery for those unique things, that ingenuity to address issues that didn't have a corresponding new revenue stream. In fact, [the CR3 Uprate Project] serves to reduce customer costs through fuel savings. So I think that's what the Commission was trying to encourage by item 10." (Tr. P. 309, L. 21-25, 310, L. 1). This policy under item 10 should be applied to the CR3 Uprate Project.

Interveners' arguments essentially amount to attacks on this policy. If Interveners want to change the policy they should open a generic docket to allow all interested and affected parties to participate -- just like the generic fuel docket where the policy in item 10 of Order 14546 was developed. OPC -- as Commissioner McMurrian pointed out -- previously told the Commission that OPC intended to initiate a generic docket to address the global policy issues but OPC has not yet done so. (Tr. P. 433, L. 13 to P. 434, L. 21).[7] Such a generic docket would allow all electric utilities and other interested parties to present their positions on the Commission policy and to submit evidence to support their positions. Due process requires that much from the

[7] OPC, on behalf of all Joint Movants, moved to abate the proceeding on February 2, 2007, and asserted (on page 10) that: "Citizens believe that a global review rather than a piecemeal examination of such costs will lead to a more cogent and cohesive policy to be applied to this and other future issues in the fuel docket. Citizens will soon seek in a separate docket a broad policy review of the appropriateness of including certain costs in the amounts approved for collection through the fuel clause."

Commission. See Order No. 19732, Docket Nos. 850152-TL and 861383, 1988 Fla. PUC LEXIS 1019, p. 7 (July 27, 1988) (citing City of Plant City v. Mayo, 337 So. 2d 966 (Fla. 1976), and holding that the Mayo case set forth the rule governing the implementation of policy changes, and that a policy could be changed "as long as interested and affected parties have a forum in which to challenge any change and the basis on which the action is taken is supported by the record.").

As for the CR3 Uprate Project, it clearly meets the two-part test of item 10 of Order 14546 and it is consistent with the underlying Commission policy of item 10. PEF, accordingly, requests that the Commission grant its Petition and determine that all of the CR3 Uprate Project costs are eligible for cost recovery through the Fuel Clause under item 10 of Order 14546.

II. Post-hearing Statement of Issues and Positions:

1. FACTUAL ISSUES.

ISSUE 1: Should the Commission authorize clause recovery of the prudent and reasonable costs of the following:

A. Phase 1 of PEF's CR3 Uprate Project?

Yes, the CR3 Uprate costs (1) are not recognized or anticipated in the cost levels used to determine PEF's current base rates and (2) the costs generate fuel savings for customers. Thus the project satisfies the requirements of Order 14546. Recovery through the fuel clause for all the CR3 Uprate costs, including the costs associated with Phase 1, consistent with PEF's position to Issue 3 below, should therefore be granted. Order 14546 does not contain an "earnings test" so it is irrelevant whether PEF could absorb these costs in base rates without affecting its rate of return.

B. Phase 2 of PEF's CR3 Uprate Project?

*Yes, the CR3 Uprate costs (1) are not recognized or anticipated in the cost levels used to determine PEF's current base rates and (2) the costs generate fuel savings for customers. Thus the project satisfies the requirements of Order 14546. Recovery through the fuel clause for all the CR3 Uprate costs, including the costs associated with Phase 2, consistent with PEF's position to Issue 3 below, should therefore be granted. Order 14546 does not contain an "earnings test" so it is

irrelevant whether PEF could absorb these costs in base rates without affecting its rate of return.*

C. Phase 3 of PEF's CR3 Uprate Project, including:

1. Nuclear Core Modifications, Secondary Systems, and Other Project-related Plant Additions/Modifications?

Yes, the CR3 Uprate costs (1) are not recognized or anticipated in the cost levels used to determine PEF's current base rates and (2) the costs generate fuel savings for customers. Thus the project satisfies the requirements of Order 14546. Recovery through the fuel clause for all the CR3 Uprate costs, including the Nuclear Core Modifications, Secondary Systems, and Other Project-related Plant Additions/Modifications costs, consistent with PEF's position to Issue 3 below, should be granted. The Commission did not limit the types of costs that could be recovered pursuant to Order 14546, as long as the straightforward test was met.

2. The "point of discharge" cooling solution?

Yes, the CR3 Uprate costs (1) are not recognized or anticipated in the cost levels used to determine PEF's current base rates and (2) the costs generate fuel savings for customers. Thus the project satisfies the requirements of Order 14546. Recovery through the fuel clause for all the CR3 Uprate costs, including the "point of discharge" cooling solution costs, consistent with PEF's position to Issue 3 below, should be granted. In addition, the cooling solution changes must be made as a direct result of the increased MW output of CR3.

3. Transmission upgrades associated with the CR3 Uprate Project?

Yes, the CR3 Uprate costs (1) are not recognized or anticipated in the cost levels used to determine PEF's current base rates and (2) the costs generate fuel savings for customers. Thus the project satisfies the requirements of Order 14546. Recovery through the fuel clause for all the CR3 Uprate costs, including the transmission upgrades, consistent with PEF's position to Issue 3, should be granted. The Commission did not limit the types of costs that could be recovered pursuant to Order 14546. Also, the transmission upgrades must be made as a direct result of the increased MW output of CR3.

4. Other costs associated with phase 3 of the CR3 Uprate Project?

*Yes, the CR3 Uprate costs (1) are not recognized or anticipated in the cost levels used to determine PEF's current base rates and (2) the costs generate fuel savings for customers. Thus the project satisfies the requirements of Order 14546. Recovery through the fuel clause for all the CR3 Uprate costs,

including the other costs for Phase 3, consistent with PEF's position to Issue 3 below, should be granted. The Commission did not limit the types of costs that could be recovered pursuant to Order 14546, as long as the straightforward test was met.*

ISSUE 2: **If the Commission authorizes clause recovery of the CR3 Uprate Project, which cost recovery clause, fuel or capacity, is appropriate for capitalized costs attributable to the uprate?**

The recovery of PEF's costs for the uprate should be through the same clause in which savings will materialize, so that no particular class of customer is harmed or benefited by the allocation. Allocation of fuel savings will be through the fuel clause, so the costs must be allocated the same way.

ISSUE 3: **If the Commission authorizes clause recovery of the CR3 Uprate Project, what capital recovery periods should the Commission prescribe for the assets?**

Consistent with past Commission precedent and policy, PEF should be authorized to recover through the fuel adjustment clause the amortization of capital costs and a return on capital at their current pretax weighted average cost of capital (WACC) of the project amortized over a period for which the demonstrated fuel savings exceed the amortization and pretax WACC return of the project.

ISSUE 4: **Based on the recovery periods prescribed for the CR3 Uprate Project assets, what ratemaking adjustments, if any, are necessary?**

No rate making adjustments are necessary. Consistent with Commission treatment in past petitions of this nature, PEF proposes fuel clause recovery of the amortization of capital investment and the return on that capital investment at the pretax weighted average cost of capital last authorized by the commission. As such these investment costs would not be included in the calculation of base rates during the period over which recovery is occurring through the fuel clause.

ISSUE 5: **If the Commission authorizes PEF clause recovery of the CR3 Uprate Project, what return on investment should the Commission authorize PEF to include?**

Consistent with the Commission's past decisions that have allowed recovery of capital costs through the fuel clause pursuant to Order 14546, PEF proposes to recover a return on investment of its current pretax weighted average cost of capital.

ISSUE 6: **If the Commission authorizes clause recovery of the CR3 Uprate Project, how should the costs associated with the project be allocated between wholesale and retail jurisdictions for rate recovery purposes?**

To the extent that the joint owners of CR3 agree to pay for a portion of the costs associated with the CR3 uprate, PEF will reduce its cost recovery request accordingly. Likewise, the net fuel savings benefits will be allocated proportionately among the joint owners, depending on the percentage of costs each owner bears.

ISSUE 7: **If the Commission authorizes clause recovery of the CR3 Uprate Project, what reports, if any, should PEF be required to file reports with the Commission?**

Consistent with PEF's past practice associated with the Commission's approval of past requests, the Company will attach an exhibit to its testimony each year in the fuel clause, which will show the calculation of fuel savings and costs of the project.

ISSUE 8: **Should this docket be closed?**

Yes, this docket should be closed.

III. Proposed Findings of Fact and Conclusions of Law.

Based on the undisputed or greater weight of the evidence at the hearing, and the Commission's Rules, Orders, and other applicable law, the Commission finds that:

1) The CR3 Uprate Project costs are fossil fuel-related costs normally recovered through base rates but which were not recognized or anticipated in the cost levels used to determine PEF's current base rates.

2) The CR3 Uprate Project costs, if expended, will result in fuel savings to customers.

3) PEF's authorized to recover through the Fuel Clause the amortization of capital costs and a return on capital at its current pretax weighted average cost of capital (WACC) of the CR3 Uprate Project costs, amortized over a period for which the demonstrated fuel savings exceed the amortization and pretax WACC return of the CR3 Uprate Project.

4) PEF shall attach an exhibit to its fuel clause testimony each year which will show the calculation of costs and fuel savings for that particular year.

5) To the extent PEF's joint owners choose to participate in the CR3 Uprate and pay for a portion of its costs, PEF will reduce its costs for which it seeks recovery by the percentage of costs for which the joint owners pay. Fuel savings will likewise be proportionately reduced based on that percentage.

Respectfully submitted this 28th day of August, 2007.

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished to all counsel of record and interested parties as listed below via electronic mail and U.S. Mail this 28th day of August, 2007.

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