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## Electronic Filing

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b. Docket No. 080009-EI

In re: Nuclear Cost Recovery Clause.

c. Document being filed on behalf of Office of Public Counsel

d. There are a total of 20 pages.

e. The document attached for electronic filing is OPC's Post-Hearing Statement of Positions and Post-Hearing Brief.

(See attached file: 080009.brief.s version.doc)

Thank you for your attention and cooperation to this request.

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DOCUMENT NUMBER-DATE

08867 SEP 19 8

FPSC-COMMISSION CLERK

9/19/2008

**BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION**

In Re: Nuclear Cost Recovery     )  
Clause.                                 )  
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Docket No. 080009-EI

FILED: September 19, 2008

**OPC'S POST-HEARING STATEMENT OF POSITIONS AND POST-HEARING BRIEF**

As directed by the Commission at the conclusion of the evidentiary hearing, the Citizens of the State of Florida, through the Office of Public Counsel (OPC), hereby submit their Post-Hearing Statement of Positions and Post-Hearing Brief.

**PRELIMINARY STATEMENT**

OPC participated in several full and partial stipulations that the Commission approved at the outset of the evidentiary hearing on September 11, 2008. In the course of the hearing OPC litigated only one issue—that of whether Florida Power & Light Company (FPL), having imposed upon itself the worthy standard of competitive bidding, subsequently departed from that standard without adequate justification when procuring equipment and services for its nuclear activities. However, the issue relates to all of FPL's uprate projects and new nuclear units. It also relates to several different time periods. Rather than repeat the argument numerous times in response to each of the several subparts of the Prehearing Order to which it relates, OPC will list the various issues which encompass it and present the argument once. So that the argument on the disputed matter appears at the outset of the brief, OPC will take these issues out of the order in which they appear in the Prehearing Order.

DOCUMENT NUMBER-DATE

08867 SEP 19 08

FPSC-COMMISSION CLERK

**ISSUE 2A:** Should the Commission find that for the year 2007, FPL's project management, contracting, and oversight controls were reasonable and prudent for the Turkey Point 6 & 7 project and for the Extended Power Uprate (EPU) project?

**ISSUE 6A:** What amount should the Commission approve as FPL's final 2007 true-up of prudently incurred preconstruction costs for the Turkey Point Units 6 & 7 project?

**ISSUE 6B:** What total amount should the Commission approve as FPL's final 2007 true-up to be recovered for the Turkey Point Units 6 & 7 project?

**ISSUE 8A:** What amount should the Commission approve as FPL's 2008 actual and estimated costs to be recovered for the Turkey Point Units 6 & 7 project?

**ISSUE 8B:** What total amount should the Commission approve as FPL's 2008 actual and estimated costs to be recovered for the Turkey Point Units 6 & 7 project?

**ISSUE 10A:** What amount should the Commission approve as FPL's 2009 projected preconstruction costs for the Turkey Point Units 6 & 7 project.

**ISSUE 10B:** What total amount should the Commission approve as FPL's 2009 projected costs to be recovered for the Turkey Point Units 6 & 7 project?

**ISSUE 10C:** What amount should the commission approve as FPL's 2009 projected construction costs of the EPU project?

**OPC:** \*FPL frequently relied on single source or sole source contracts instead of competitive bidding without sufficient justification. FPL also failed to demonstrate the resulting costs were reasonable. The Commission should disallow the return that FPL seeks to earn on the single largest such contract. Alternatively, the Commission should retain jurisdiction over the contract's costs and require FPL to demonstrate the costs were reasonable. At a minimum, the Commission should place FPL on notice the Commission will require a more

rigorous demonstration that competitive bidding is infeasible, and that the costs of a single or sole source contract are reasonable.\*

### **ARGUMENT ON 2A, 6A, 6B, 8A, 8B, 10A, 10B, and 10C**

FPL's management control policies declare explicitly that competitive bidding is FPL's preferred method of procurement. (TR-317: Exhibits 2, Item 11).

The same policy statements delineate the requirements that FPL employees must satisfy before they are to be allowed by senior management to depart from this standard. To procure equipment or services for a nuclear project without first soliciting competitive bids, the person or group within FPL involved in the procurement must seek and obtain authority to do so. The request for exemption from the requirement of competitive bidding is submitted to the same vice president who has decision making responsibility for procuring the item or service. (TR-673-674).

The vehicle used to persuade the vice president that he/she should authorize an exception to the policy of competitive bidding in a particular instance is the "justification memorandum." The required justification has two distinct aspects: an explanation of why competitive bidding is infeasible; and the reasonableness of the costs to be incurred in the absence of competitive bidding. (TR-672) If the vice president is convinced by the justification memorandum that a departure from competitive bidding should be authorized, *and* that the cost of the proposed procurement is reasonable, the vice president will authorize the sole source or single source contract. If the vice president is not persuaded by the justification memorandum, the individual or group must solicit competitive bids. (TR-608-609) It is important, then, that the justification memorandum communicate clearly the basis for the contention that competition is infeasible or

undesirable in the particular instance, and display the evidence that the proposed sole or single source contract is reasonable in cost.

OPC's expert witness, Dr. William Jacobs, holds a Ph.D in nuclear engineering. He has been engaged in projects that encompass the engineering, construction and start-up of numerous nuclear units for approximately three decades. Dr. Jacobs reviewed the procurement activities in which FPL has been engaged in the course of pursuing the uprate projects and the proposed new nuclear units. Dr. Jacobs discovered numerous instances in which FPL awarded contracts without first soliciting competitive bids, and in which the justification memoranda prepared by FPL employees were insufficient to comply with FPL's internal management criteria. In lieu of specific analyses, several such memoranda relied on the use of repetitive "stock" phrases—indicating that FPL employees prepared these critically important documents casually and by rote. (TR-323) Other memoranda invoked the ability of a single or sole source provider to help FPL meet its construction schedule, in violation of the criteria governing the uprate projects. (TR-320) Dr. Jacobs referred to some instances in which the "real" reasons for the single or sole source contracts were not developed in the justification memoranda, but were offered only later, after OPC questioned their adequacy. (TR-323-324). The matters cited by FPL in several memoranda—experience, proprietary information, timing—failed to demonstrate why competitive bidding would be infeasible. In others, FPL failed to demonstrate that the cost of the sole source or single source contract was reasonable.

In his testimony, Dr. Jacobs emphasized the importance for future proceedings of communicating to FPL *now* the Commission's insistence that FPL adhere to and implement its competitive bidding standard fully and properly. To illustrate his point about the need for a sufficient demonstration of reasonableness of costs, Dr. Jacobs referred to a \$100 million

contract for the replacement of low pressure turbine rotors. Dr. Jacobs characterized the justification of the reasonableness of the contract costs as a “back-of-envelope” calculation that in his expert opinion is inadequate for a contract of this magnitude.<sup>1</sup> (TR-569) Based on the resulting inability of the parties or the Commission to determine that the cost of the contract is reasonable, for which FPL must bear responsibility, Dr. Jacobs suggested that the Commission disallow the return on the equity investment that would be associated with the contract.

Alternatively, he recommended that the Commission withhold 10% of the revenue requirements associated with the contract unless and until FPL can provide an adequate demonstration of the reasonableness of the contract costs during the next hearing cycle. At a minimum, he said, the Commission should place FPL on notice that on a going forward basis the Commission will require strict adherence to the competitive bidding criteria, and rigorous proof that the costs of sole and single source contracts are reasonable. (TR-315)

In response, FPL filed rebuttal testimony of three witnesses. The testimony of these witnesses and the justification memoranda that were the subjects of Dr. Jacobs’ criticisms sound similar themes. None is sufficient to avert the conclusion that FPL (1) established the right procurement policy, and (2) then proceeded to violate it.

*Schedule considerations are an insufficient basis for departing from the competitive bidding standard.* Significantly, FPL’s Policy NP-1100, which governs procurement practices for uprate projects, prohibits FPL management from relying on “schedule pressure”—that is, the need to

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<sup>1</sup> During cross-examination, Counsel for FPL showed Dr. Jacobs a “Word document” that had been attached to the short-form calculation that he addressed in his testimony. It was admitted as Exhibit 45. Counsel claimed that by omitting the eight page document Dr. Jacobs had been selective in his choice of exhibits. The claim is patently false. The attachment displayed four options – each requiring a different scope of work – that FPL considered as available solutions to the rotor situation. Each option contained an estimate of what the option itself would cost; however, nowhere within the eight page word document did FPL consider whether the cost of an option, as priced out, was reasonable. Only after FPL selected an option (the last of the four described) did FPL address the reasonableness of the cost of its choice. FPL addressed the reasonableness of its chosen option in the one-page exercise that Dr. Jacobs included as an exhibit. None of the eight pages of the Word document were germane to his point. (TR-579 – 580).

adhere to a schedule of activities--to justify abandoning the standard of competitive bidding. (The counterpart policy that governs procurement for new units does not explicitly prohibit schedule pressure as a justification for a sole or single source contract, *but for the following reasons schedule pressure should be rejected as a sufficient justification here, too.*) It is important to distinguish between the time needed to solicit and evaluate bids, on the one hand, and the ability of a contractor to meet the deadline for “deliverables,” on the other. Dr. Jacobs said pointedly that the utility has the obligation to plan its affairs so that it has time to solicit and score bids before awarding a contract. In other words, insufficient time to solicit and score bids resulting from poor planning is no “justification” for dispensing with competitive bidding. (TR-583).<sup>2</sup> The ability of a contractor to commit to the utility’s schedule is one of the relevant criteria for selection that can be built into the bid specifications of a request for proposals. (TR-604) Competitive bidding can identify those candidates who are able to adhere to the utility’s schedule. In other words, timing considerations constitute reasons to conduct competitive bidding, not reasons to abandon it.

*The experience of an incumbent contractor is an insufficient basis on which to depart from the competitive bidding standard.* Several of the justification memoranda cite the experience of the contractor selected for a single source or sole source contract. However, the requisite experience of a contractor is another bidding specification that readily can be built into a request for proposals. (TR-605) Just as the bid-and-evaluate process can identify those vendors who are capable of meeting the utility’s time frame, it can identify those vendors or contractors who have the experience necessary to qualify them for consideration. The need to identify candidates who

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<sup>2</sup> The justification memorandum prepared to support the McNabb Hydrologic Consulting Contract states, “Due to the project schedule, and considering the time required to obtain quotes...” (TR-584).

possess the requisite experience is a reason to conduct competitive bidding, not a reason to abandon it.

*A small universe of qualified contractors is an insufficient basis on which to depart from the competitive bidding standard.* A frequent theme in FPL's justification memoranda and rebuttal testimony is the shrunken number of qualified vendors and contractors in the nuclear industry. However, the fact that the pool of providers is small, in and of itself, is insufficient to excuse FPL from testing the market. FPL's consultant, John Reed, referred approvingly to the procurement practices of the North American Development Bank. At hearing, OPC distributed the bank's procurement policy document. The portion devoted to the bank's public sector clients, which explicitly includes public utilities, demonstrates clearly that the model held up by the FPL consultant contemplates that--in the absence of *different* and adequate justification—utility applicants for loans from this bank will be expected to solicit competitive bids even when confronted with a small pool of qualified vendors. (TR-761; Exhibit 46, pages 5,6,7,9).

*The fact that an "incumbent" contractor utilizes proprietary data or processes is an insufficient basis on which to depart from the competitive bidding standard.* In justification memoranda and testimony, FPL referred frequently to contractors that possess proprietary data. At times it seemed FPL regards—or wishes parties and Commission to regard—proprietary information either as an outright, dispositive determinant of the single qualified contractor or, at the least, a substantial barrier to competition. Dr. Jacobs started the process of debunking this notion when he said, in response to a question from Counsel for FPL, that other contractors could well be able to perform the needed service with alternative proprietary data or processes. (TR-576). On cross-examination, FPL's William Labbe dispelled any remaining misimpression that proprietary information necessarily means that competitive bidding in a given situation is

infeasible. He explained that when FPL does business with an entity that has proprietary information, FPL contractually acquires the right to use that proprietary information in the event FPL and the contractor cannot reach terms governing the next service to be provided. (TR-682-684) This only makes sense; otherwise, each contractor possessing proprietary data or processes would, upon being selected once, become a powerful, unregulated monopoly, and FPL would be helpless to resist its demands. (TR-682-683). It follows from Mr. Labbe's description of FPL's protective contractual arrangements that the presence of proprietary information is insufficient in a given situation to justify departing from the standard of competitive bidding. (TR-685). To the contrary, the explanation regarding FPL's rights to the use of the proprietary information affirms that other vendors or contractors frequently can go head-to-head with the incumbent, notwithstanding the proprietary process or data. (TR-686)

FPL's Mr. Labbe testified that proprietary information plays a larger role in the choice of nuclear fuel and an "accident analysis." (TR-685). However, he acknowledged that even suppliers of nuclear fuel engage in a competitive market. (TR-685) In fact, Mr. Labbe stated that FPL has changed suppliers of nuclear fuel to one of its units. (TR-686). Mr. Labbe asserted that the time needed to completely change out existing fuel from a nuclear unit and replace it with fuel from a different source—three fueling cycles—would impact the uprate project schedule to the extent that an alternative to the existing supplier of fuel would be infeasible. One would expect such a significant consideration to appear in the justification memorandum submitted to the vice president in support of the Westinghouse and Areva sole source contracts. However, the justification memorandum contains no reference to it—a separate shortcoming of

the justification memoranda prepared to support two important contracts, and proof positive that FPL devotes too little attention to their contents.<sup>3</sup>

*The claim “We know the answer without having to ask” is an insufficient rationale for departing from the standard of competitive bidding.* In several instances, FPL asserted that competitive bidding was unnecessary because FPL stays abreast of industry billing rates and costs. (TR-687). In support of this contention, FPL consultant John Reed referred to situations in which a lower bid is “not likely” or in which “prospective” savings from the incumbent are “expected.” (TR-745). However, the argument falls under its own weight. If staying broadly current on industry billing rates suffices for contractor selection, why would FPL ever have to engage in competitive bidding?

Upon closer inspection, it is clear that these particular claims of FPL and its consultant are mere supposition. As FPL’s Mr. Reed acknowledged, there is a distinction between *likelihood* and *certainty*. (TR-785). A year ago, one would have predicted it was *unlikely* that Appalachian State would defeat the University of Michigan’s football team on Michigan’s field. It certainly happened. While FPL may regard a better offer as “unlikely,” one cannot be *certain* that another, hungrier contractor will not bid a more cost-effective contract unless one gives that contractor an opportunity to win the work.

Similarly, one cannot know that the incumbent will not sharpen its pencil and make a better offer than the one contemplated by FPL unless the incumbent understands it is not the only game in town. In this regard, it is telling that, according to Mr. Labbe, FPL’s practice is to refrain from

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<sup>3</sup> Mr. Labbe claimed that the 3 fueling cycle impact of a change of vendors was “inferred” within the justification memorandum. (TR-677). OPC can think of no more telling indication that the memorandum was prepared casually, and without due regard for its importance.

telling a contractor that FPL regards it as a single or sole source before the contract is in place.<sup>4</sup> (TR-687). While Mr. Labbe was reluctant to say why (TR-687 - 688), the reason was obvious: a contractor would be less motivated to make its best offer if it were to find out it has been “preselected” and has no competition.

To cancel a contest on the basis that the outcome is known beforehand is to contradict the very essence of the rationale for the competitive bidding standard, which is that competitive bidding is the superior way to identify the best offer and the lowest cost. Simply stated, FPL cannot advance this argument in justification of a decision not to seek competitive bids and also claim to adhere to its written policy.

*The Commission Staff’s audit report provides no support for FPL’s claim that it satisfied all of the requirements associated with justifying a departure from competitive bidding.* In its audit document, the Commission Staff stated that it appears FPL has followed its contractor selection procedure. (Exhibit 40). In rebuttal testimony, FPL cited this passage as support for its contention that it has followed its procurement policy completely. (Tr-752). However, the Staff’s comments related only to the handful of large contracts filtered by the Nuclear Filing Requirements’ threshold size of \$1 million dollars. Staff did not review any of the numerous small contracts to determine if FPL followed the selection criteria in those instances. (TR-640).

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<sup>4</sup> Q When FPL decides to award a contract on the basis of a single source determination, does that contractor know that there will be no additional bids or competitors for the business?

A Perhaps. But it’s not something that we would necessarily communicate with them. We wouldn’t, you know, make that knowledge – that wouldn’t necessarily be part of the conversation.

Q, And why would you not disclose that?

A There would be no reason to.

Q Well, wouldn’t one reason be the fact that if they were aware there were no competitors, they would have no incentive to provide the lower rate?

A Yeah. Probably the best way to --

Further, as stated earlier there are two separate, distinct aspects to FPL's protocol. To justify omitting the steps of soliciting and scoring competitive bids, FPL employees must show an adequate reason why competitive bidding is inapplicable *and* show separately that the cost of the proposed single or sole source contract is reasonable. Staff said in testimony that it conducted a management audit, not a financial audit. (TR-641). According to Staff witnesses, the scope of their review excluded any consideration of the proof of reasonableness of even the large contracts that were the subject of their finding. (TR-641). In summary, the limited scope of the Staff's review did not encompass all of FPL's single/sole source contracts. It did not encompass both prongs of the justification required to support dispensing with competitive bidding. The limited nature of the review, therefore, precludes any claim that the audit supports FPL's contention that it complied completely with its procurement policy.<sup>5</sup>

*The evidence taken as a whole discloses that FPL is not fully committed to its stated policy of competitive bidding.* FPL's William Labbe defended FPL's decision to omit competitive bidding on the grounds that FPL was aware of what was going on in the industry. FPL's Steven Scroggs further testified that "Competitive bidding is simply one way to test the market ..."<sup>6</sup>

On the one hand, Mr. Scroggs agreed that the justification memorandum is the vehicle, the document that contains the assurance of reasonable costs mandated by FPL's internal

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<sup>5</sup> During questioning, Staff witness Vinson told Counsel for FPL that with respect to smaller contracts, "we did not see anything that gave us concern." This answer must be viewed in light of his prior testimony, in which he stated the scope of review of smaller contracts excluded a consideration of contractor selection procedures and also excluded a consideration of the reasonableness of contract costs.

<sup>6</sup> At page 728, this exchange occurred:

Q (Mr. McGlothlin) Where applicable and appropriate do you agree that the competitive bidding is the best way to test the market for price?

A (Mr. Scroggs) It is definitely a good, sound way to test the market.

procedure. (TR-731). Inconsistently, he immediately asserted that the boundaries of the memorandum would be expanded by a “knowledgeable requester and a knowledgeable reviewer.” This latter comment fuels the already clear impression that, with respect to the competitive bidding standard, FPL managers believe they can go through the motions of a justification memorandum in a perfunctory manner. They place more emphasis on management discretion and confidence in management’s knowledge of industry conditions than on the efficacy of competition in revealing the most qualified provider and the lowest cost. Mr. Scroggs’ did not change his viewpoint when he was reminded that parties and the Commission require adequate proof that FPL has thoroughly explored available alternatives. (TR-731 – 732).

#### CONCLUSION REGARDING THE COMPETITIVE BIDDING ISSUES

Boiled down, a primary difference between OPC’s expert witness, Dr. Jacobs, and FPL’s witnesses is this: Dr. Jacobs advocates competitive bidding, because the utility doesn’t know it has the best deal unless the utility asks while FPL too frequently has sidestepped its own competitive bidding requirement, because FPL’s view is that it knows without having to ask.

With respect to competitive bidding there is, in the totality of the record, a clear indication that FPL’s policy is one thing and FPL’s practice is another. FPL’s allegiance to the standard of competitive bidding is half-hearted. FPL managers believe they can rely on their experience and knowledge to predict in advance the outcome of competitive bids. In practice, “manager discretion” is emphasized at the expense of competitive bidding. To protect the interests of customers who bear the costs, the Commission’s strong message to FPL should be that this is unacceptable.

## ADDITIONAL ISSUES

**ISSUE 1A:** **Should Progress Energy Florida, Inc. and Florida Power & Light Company be allowed to recover through the Nuclear Cost Recovery Clause revenue requirements for a phase or portion of a system associated with a power plant, after such phases or portion of the project has been placed into commercial service, or should such phases or portion of the project be recovered through base rates?**

**OPC:** \*Once the phase or portion has been placed in commercial service, the utility should recover the costs through base rates.\*

**ISSUE 1B:** **If recovery of costs for a phase or portion of a system associated with a power plant that is in commercial service continues through the Nuclear Cost Recovery Clause, how should the revenue requirements for that phase or portion be determined?**

**OPC** \*The revenue requirements should be determined in a manner analogous to the methodology used in a revenue requirements case.\*

**ISSUE 1C:** **How should the completion of site clearing work be determined for purposes of distinguishing between pre-construction and construction costs for recovery under the clause?**

**OPC:** \*The determination will be dependent on individual circumstances, and so must be considered on a case-by-case basis. However, OPC believes the determination would be based upon work related to the generating unit, and not related structures (such as transmission).\*

**ISSUE 1D:** **Should a utility be required to inform the Commission of any change in ownership or control of any asset which was afforded cost recovery under the Nuclear Cost Recovery Clause?**

**OPC:** \*Yes, the utility should immediately inform the Commission as well as all parties to the relevant cost recovery docket.\*

**ISSUE 2B:** Should the Commission find that for the year 2007, FPL's accounting and costs oversight controls were reasonable and prudent for the Turkey Point 6 & 7 project and for the EPU project?

**OPC:** (1) EPU Project.

No position.

**ISSUE 4B:** What amount should the Commission approve as FPL's final 2007 true-up of prudently incurred site selection costs for the Turkey Point Units 6 & 7 project?

**OPC:** Subject to the stipulation in 4 A, OPC takes no position on 4B.

**ISSUE 5B:** What amount should the Commission approve as PEF's final 2007 true-up of prudently incurred site selection costs for the Levy Units 1 & 2 Project?

**OPC:** Subject to the stipulation in 5A, OPC takes no position on 5B.

**ISSUE 6C:** What amount should the Commission approve as FPL's final 2007 true-up of prudently incurred construction costs for the EPU project?

**OPC:** The amount approved should reflect the Commission's decision on the alternative remedies proposed by OPC's witness with respect to FPL's overreliance on single source and sole source contracts.

**ISSUE 7B:** What amount should the Commission approve as PEF's final 2007 true-up of prudently incurred construction costs for the Levy Units 1 & 2 project?

**OPC:** Subject to the stipulation in 5A, OPC takes no position on 7B.

**ISSUE 7C:** What amount should the Commission approve as carrying charges on PEF's prudently incurred 2007 construction costs for the Levy Units 1 & 2 project?

**OPC:** Subject to the stipulation in 5A, OPC takes no position on 7C.

**ISSUE 7D:** What total amount should the Commission approve as PEF's final 2007 true-up to be recovered for the Levy Units 1 & 2 project?

**OPC:** Subject to the stipulation in 5A, OPC takes no position on 7D.

**ISSUE 7E:** What amount should the Commission approve as PEF's final 2007 true-up of prudently incurred construction costs for the Crystal River 3 Uprate project?

**OPC:** Subject to the stipulation in Issue 7H, OPC does not recommend a specific adjustment.

**ISSUE 7F:** What amount should the Commission approve as carrying charges on PEF's prudently incurred 2007 construction costs for the Crystal River 3 Uprate project?

**OPC:** Subject to the stipulation in Issue 7H, OPC does not recommend a specific adjustment.

**ISSUE 7G:** What total amount should the Commission approve as PEF's final 2007 true-up to be recovered for the Crystal River 3 Uprate project?

**OPC:** Subject to the stipulation in Issue 7H, OPC does not recommend a specific adjustment.

**ISSUE 8C:** What amount should the Commission approve as FPL's 2008 actual and estimated construction costs for the EPU project?

**OPC:** The amount should reflect any disallowance or adjustment made in consideration of the alternative remedies proposed by OPC's witness.

**ISSUE 8D:** What amount should the Commission approve as carrying charges on FPL's 2008 actual and estimated construction costs for the EPU project?

**OPC:** The amount should reflect any disallowance or adjustment made in consideration of the alternative remedies proposed by OPC's witness.

**ISSUE 8E:** What total amount should the Commission approve as FPL's 2008 actual and estimated costs to be recovered for the EPU project?

**OPC:** The amount should reflect any disallowance or adjustment made in consideration of the alternative remedies proposed by OPC's witness.

**ISSUE 9A:** What amount should the Commission approve as PEF's 2008 actual and estimated preconstruction costs for the Levy Units 1 & 2 project?

**OPC:** OPC does not recommend a specific adjustment, subject to a prudence review in the NCRC hearings in 2009.

**ISSUE 9B:** What amount should the Commission approve as PEF's actual and estimated construction costs for the Levy Units 1 & 2 project?

**OPC:** OPC does not recommend a specific adjustment, subject to a prudence review in the NCRC hearings in 2009.

**ISSUE 9C:** What amount should the Commission approve as carrying charges on PEF's 2008 actual and estimated construction costs for the Levy Units 1 & 2 project?

**OPC:** OPC does not recommend a specific adjustment, subject to a prudence review in the NCRC hearing s in 2009.

**ISSUE 9D:** What total amount should the Commission approve as PEF's 2008 actual and estimated costs to be recovered for the Levy Units 1 & 2 project?

**OPC:** OPC does not recommend a specific adjustment, subject to a prudence review in the NCRC hearings in 2009.

**ISSUE 9E:** What amount should the Commission approve as PEF's 2008 actual and estimated construction costs for the Crystal River 3 Uprate project?

**OPC:** OPC does not recommend a specific adjustment, subject to the stipulation in Issue 7H, and subject to prudence review in the NCRC hearings in 2009.

**ISSUE 9F:** What amount should the Commission approve as carrying charges on PEF's 2008 actual and estimated construction costs for the Crystal River 3 Uprate project?

**OPC:** OPC does not recommend a specific adjustment, subject to the stipulation in Issue 7H, and subject to prudence review in the NCRC hearing in 2009.

**ISSUE 9G:** What total amount should the Commission approve as PEF's 2008 actual and estimated costs to be recovered for the Crystal River 4 Uprate project?

**OPC:** OPC does not recommend a specific adjustment, subject to the stipulation in Issue 7H, and subject to a prudence review in the NCRC hearing in 2009.

**ISSUE 10D:** What amount should the Commission approve as carrying charges on FPL's 2009 projected construction costs for the EPU project?

**OPC:** The amount should reflect any disallowance or adjustment made in consideration of the alternative remedies proposed by OPC's witness.

**ISSUE 10E:** What total amount should the Commission approve as FPL's 2009 projected costs to be recovered for the EPU project?

**OPC:** The decision should take into consideration OPC's assertions regarding contracting practices.

**ISSUE 11A:** What amount should the Commission approve as PEF's 2009 projected preconstruction costs for the Levy Units 1 & 2 project?

**OPC:** OPC does not recommend a specific adjustment, subject to the subsequent actual/estimated filing by PEF and its reasonableness review in 2009, and subject to the subsequent true-up filing and its prudence review in 2010.

**ISSUE 11B:** What amount should the Commission approve as PEF's 2009 projected construction costs for the Levy Units 1 & 2 project?

**OPC:** OPC does not recommend a specific adjustment, subject to the subsequent actual/estimated filing by PEF and its reasonableness review in 2009, and subject to the subsequent true-up filing and its prudence review in 2010.

**ISSUE 11C:** What amount should the Commission approve as carrying charges on PEF's 2009 projected construction costs for the Levy Units 1 & 2 project?

**OPC:** OPC does not recommend a specific adjustment, subject to the subsequent actual/estimated filing by PEF and its reasonableness review in 2009, and subject to the subsequent true-up filing and its prudence review in 2010.

**ISSUE 11D:** What total amount should the Commission approve as PEF's 2009 projected costs to be recovered for the Levy Units 1 & 2 project?

**OPC:** OPC does not recommend a specific adjustment, subject to the subsequent actual/estimated filing by PEF and its reasonableness review in 2009, and subject to the subsequent true-up filing and its prudence review in 2010.

**ISSUE 11E:** What amount should the Commission approve as PEF's 2009 project construction costs for the Crystal River 3 Uprate project?

**OPC:** OPC does not recommend a specific adjustment, subject to stipulation in 7H, and subject to a prudence review in the NCRC hearings in 2010.

**ISSUE 11F:** What amount should the Commission approve as carrying charges on PEF's 2009 projected construction costs for the Crystal River 3 Uprate project?

**OPC:** OPC does not recommend specific adjustment, subject to stipulation in 7H, and subject to a prudence review in the NCRC hearings in 2010.

**ISSUE 11G:** What total amount should the Commission approve as PEF's 2009 projected costs to be recovered for the Crystal River 3 Uprate project?

**OPC:** OPC does not recommend a specific adjustment, subject to stipulation in 7H, and subject to a prudence review in the NCRC hearings in 2010.

**ISSUE 12:** What total amount should the Commission approve for the Nuclear Cost Recovery Clause to be included in establishing FPL's 2009 Capacity Cost Recovery Clause factor?

**OPC:** The amount should reflect adjustment made in consideration of OPC's assertions regarding contracting practices.

**ISSUE 13:** What total amount should the Commission approve for the Nuclear Cost Recover Clause to be included in establishing PEF's 2009 Capacity Cost Recovery Clause factor?

**OPC:** Subject to the stipulations on Issues 5A and 7H and to the prudence reviews in 2009 and 2010, OPC does not recommend a specific adjustment to PEF's filing at this time.

Dated this 19 day of September, 2008.

Respectfully submitted,

J.R. Kelly  
Public Counsel

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Attorney for the Citizens  
of the State of Florida

**DOCKET NO. 080009-EI**  
**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that a copy of the foregoing **OPC'S POSTHEARING STATEMENT AND POST-HEARING BRIEF** has been furnished by U.S. Mail and electronic mail to the following parties on this 19th day of September, 2008.

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