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**Subject:** e-filing (Dkt. No. 090009-EI)  
**Attachments:** 090009 prehearing statement.sversion.doc

Electronic Filing

a. Person responsible for this electronic filing:

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b. Docket No. 090009-EI

In re: Nuclear Cost Recovery Clause.

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

d. There are a total of 14 pages.

e. The document attached for electronic filing is the Prehearing Statement of the Office of Public Counsel.  
(See attached file: 090009 prehearing statment.sversion.doc)

Thank you for your attention and cooperation to this request.

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DOCUMENT NUMBER-DATE

08249 AUG 10 8

8/10/2009

FPSC-COMMISSION CLERK

**BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION**

In re: Nuclear Cost Recovery  
Clause.

DOCKET NO.: 090009-EI  
FILED: August 10, 2009

**PREHEARING STATEMENT OF THE OFFICE OF PUBLIC COUNSEL**

The Citizens of the State of Florida, through the Office of Public Counsel,  
pursuant to the Order Establishing Procedure in this docket, Order No. PSC-09-0137-  
PCO-EI, issued March 6, 2009, hereby submit this Prehearing Statement.

**APPEARANCES:**

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On behalf of the Citizens of the State of Florida

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On behalf of the Citizens of the State of Florida

DOCUMENT NUMBER-DATE

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FPSC-COMMISSION CLERK

1. WITNESSES:

The Citizens intend to call the following witnesses, who will address the issues indicated:

<u>NAME</u>	<u>ISSUES</u>
William R. Jacobs, Jr., Ph.D.	

2. EXHIBITS:

Through William R. Jacobs, Jr., Ph.D., the Citizens intend to introduce the following exhibits, which can be identified on a composite basis:

**FPL**

WRJ(FPL)-1	Resume of William R. Jacobs, Jr.
WRJ(FPL)-2	Referenced Documents

**PROGRESS**

WRJ(PEF)-1	Resume of William R. Jacobs, Jr.
WRJ(PEF)-2	Resumes of James P. McGaughy and Cary Cook
WRJ(PEF)-3	Referenced Documents

3. STATEMENT OF BASIC POSITION

**FPL**

The Citizens' basic position is that based on the filings and information provided to date, FPL has not met its burden to demonstrate that its method of selecting the vendor(s) for the services of engineering, procurement and construction of the Turkey Point 6 & 7

units was prudent and reasonable. Furthermore, FPL has not performed the feasibility analysis required by Commission Rule 25-6.0423, F.A.C. Finally, FPL has not met its burden of demonstrating that the costs for the Extended Power Uprate project are separate and apart from costs that would have been necessary to provide safe and reliable service absent the EPU project.

### **PEF**

PEF has not met its burden of demonstrating that its actions related to the signing of the Engineering, Procurement and Construction (EPC) contract on December 31, 2008 were reasonable and prudent in light of circumstances known or knowable to management at the time of signing. Also, PEF has not submitted a sufficient or compliant long-term feasibility analysis related to completing of the Levy Nuclear Project (LNP) as required by Commission Rule 25-6.043, FAC and the LNP Determination of Need Order. The Commission should consider spinning off the issues surrounding the LNP project schedule delay and also require PEF to file additional information related to the circumstances surrounding the signing of the EPC and the feasibility of the LNP project based on revised costs.

## **4. STATEMENT OF FACTUAL ISSUES AND POSITIONS**

**ISSUE 1:** Should over or under collections in the Capacity Cost Recovery Clause be included in the calculation of recoverable costs in the NCRC?

OPC: No position at this time.

**ISSUE 2:** When a utility elects to defer recovery of some or all of the costs that the Commission approves for recovery through the Capacity Cost Recovery

Clause, what carrying charge should accrue on the deferred balance?

OPC: No position at this time.

**ISSUE 3:** Should FPL and PEF be permitted to record in rate base the incremental difference between Allowance for Funds Used During Construction (AFUDC) permitted by Section 366.93, F.S. and their respective most currently approved AFUDC, for recovery when the nuclear plant enter commercial operation?

OPC: No position at this time.

### **FPL PROJECT MANAGEMENT AND OVERSIGHT**

**ISSUE 4:** Should the Commission find that for the years 2006 and 2007, FPL's accounting and costs oversight controls were reasonable and prudent for Turkey Point Units 6 & 7 project?

OPC: No position.

**ISSUE 5:** Should the Commission find that for the years 2006 and 2007, FPL's project management, contracting, and oversight controls were reasonable and prudent for Turkey Point Units 6 & 7 project?

OPC: No position.

**ISSUE 6:** Should the Commission find that for the year 2008, FPL's accounting and costs oversight controls were reasonable and prudent for Turkey Point Units 6 & 7 project and the Extended Power Uprate project?

OPC: No position.

**ISSUE 7:** Should the Commission find that for the year 2008, FPL's project management, contracting, and oversight controls were reasonable and prudent for Turkey Point Units 6 & 7 project and the Extended Power Uprate project?

OPC: For Turkey Point Units 6 & 7, see Issue 7A. With respect to the EPU project, no position at this time.

**ISSUE 7A:** Is FPL's decision in 2008 to pursue an alternative to an Engineering Procurement Construction (EPC) contract for the Turkey Point 6 & 7 project prudent and reasonable?

OPC: No. Separating the construction function from engineering and procurement (EP and C, as compared to EPC) in a project as large and complex as the Turkey Point 6 & 7 project would expose FPL and its customers to the risk of *unreasonably high costs*. In a project of this magnitude, the contractors must interface with each other numerous times. In an EPC contract, the risk of managing those interfaces is placed on the overall contractor. When the construction function is separated, the utility carries the risk of managing the interfaces—including the risk of delays and overruns in the event those interfaces do not occur efficiently and timely. OPC raises this issue now so that, in the event FPL organizes the contracts on a basis other than EPC, and the decision results in unreasonable costs, FPL will not be able to claim a disallowance is based on hindsight review.

### **FPL'S PROJECT FEASIBILITY**

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

OPC: No. FPL updated its assumptions in other respects, but did not update its estimate of the cost of Turkey Point 6&7. Without the updated *construction costs*, FPL's "updated feasibility study" is worthless.

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

OPC: The Commission should order FPL to conduct the proper updated feasibility study by a time certain. Once the Commission receives it, the Commission should evaluate whether the project remains feasible on a long term basis.

**ISSUE 9:** Should the Commission approve what FPL has submitted as its annual detailed analyses of the long-term feasibility of completing the EPU project, as provided for in Rule 25-6.0423, F.A.C?

OPC: No position at this time.

### **FPL'S EXTENDED POWER UPRATE PROJECT**

**ISSUE 10:** What system and jurisdictional amounts should the Commission approve as FPL's final 2008 prudently incurred costs for the Extended Power Uprate project?

OPC: No position at this time.

**ISSUE 11:** Are FPL's 2008 actual, 2009 actual/estimated and 2010 projected EPU project costs separate and apart from the nuclear costs that would have been necessary to provide safe and reliable service had there been no EPU project?

OPC: FPL has not met its burden of proving that these costs are separate and apart from the nuclear costs that would have been necessary to provide safe and reliable service had there been no EPU project. Despite participating in a stipulation on the subject, FPL adamantly has refused to conduct the "separate and apart" analysis that constitutes an essential component in the determination of those EPU costs that qualify for inclusion in the nuclear cost recovery clause.

**ISSUE 12:** What system and jurisdictional amounts should the Commission approve as FPL's reasonable actual/estimated 2009 costs for the Extended Power Uprate project?

OPC: No position at this time.

**ISSUE 13:** What system and jurisdictional amounts should the Commission approve as FPL's reasonably projected 2010 costs for the Extended Power Uprate project?

OPC: No position at this time.

## **FPL'S TURKEY POINT UNITS 6 & 7 PROJECT**

**ISSUE 14:** What system and jurisdictional amounts should the Commission approve as FPL's final 2006 and 2007 prudently incurred costs for the Turkey Point Units 6 & 7 project?

OPC: No position at this time.

**ISSUE 15:** What system and jurisdictional amounts should the Commission approve as FPL's final 2008 prudently incurred costs for the Turkey Point Units 6 & 7 project?

OPC: No position at this time.

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

OPC: No position at this time.

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

OPC: No position at this time.

## **FPL'S 2010 CAPACITY COST RECOVERY CLAUSE AMOUNT**

**ISSUE 18:** What is the total jurisdictional amount to be included in establishing FPL's 2010 Capacity Cost Recovery Clause factor?

OPC: No position at this time

## **PEF PROJECT MANAGEMENT AND OVERSIGHT**



**ISSUE 19:** Should the Commission find that for the years 2006 and 2007, PEF's accounting and costs oversight controls were reasonable and prudent for Levy Units 1 & 2 project?

OPC: No position at this time.

**ISSUE 20:** Should the Commission find that for the years 2006 and 2007, PEF's project management, contracting, and oversight controls were reasonable and prudent for Levy Units 1 & 2 project?

OPC: No position at this time.

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

OPC: No position at this time.

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

OPC: No. based on the circumstances the PEF knew or should have reasonably known, it was not reasonable or prudent for PEF to sign the EPC contract with the Consortium.

**ISSUE 22:** Should the Commission find that for the year 2008, PEF's accounting and costs oversight controls were reasonable and prudent for Levy Units 1 & 2 project and the Crystal River Unit 3 Uprate project?

OPC: No position at this time.

## PEF'S PROJECT FEASIBILITY

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

OPC: No. PEF has not submitted a feasibility analysis that considers the overall cost of the projects. Because of the need to renegotiate the EPC, it is not possible at this time for PEF to provide the costs necessary to conduct this analysis. Additionally, PEF's filing does not appear to sufficiently address the non-cost components of technical and regulatory feasibility -- cost deficiencies notwithstanding. Once the Commission receives it, the Commission should evaluate whether the project remains feasible on a long term basis.

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

OPC: The Commission should order PEF to file a feasibility analysis pursuant to the rule and need order as soon as the costs associated with the revised schedule are known and measurable. The Commission should consider identifying and withholding approval of costs that would not have been incurred but for the signing of the EPC contract (or a reasonable estimate or surrogate for those costs) until and unless PEF files an adequate long term feasibility analysis.

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

OPC: See Issue 23A position. In addition, the commission should consider spinning off into a separate docket the issues of feasibility and prudence and cost impacts associated with the LNP project relative to the schedule delay issue. The Commission should require PEF to file additional information relating to the circumstances related to the signing of the EPC and

**ISSUE 24:** Should the Commission approve what PEF has submitted as its annual detailed analysis of the long-term feasibility of completing the Crystal River Unit 3 Uprate project, as provided for in Rule 25-6.0423, F.A.C?

OPC: No position at this time.

**PEF'S CRYSTAL RIVER UNIT 3 UPRATE PROJECT**

**ISSUE 25:** What system and jurisdictional amounts should the Commission approve as PEF's final 2008 prudently incurred costs for the Crystal River Unit 3 Uprate project?

OPC: No position at this time.

**ISSUE 26:** What system and jurisdictional amounts should the Commission approve as PEF's reasonably estimated 2009 costs for the Crystal River Unit 3 Uprate project?

OPC: No position at this time.

**ISSUE 27:** What system and jurisdictional amounts should the Commission approve as PEF's reasonably projected 2010 costs for the Crystal River Unit 3 Uprate project?

OPC: No position at this time.

**PEF'S LEVY UNITS 1 & 2 PROJECT**

**ISSUE 28:** What system and jurisdictional amounts should the Commission approve as PEF's final 2006 and 2007 prudently incurred costs for the Levy Units 1 & 2 project as filed in Docket No. 080009-EI?

OPC: No position at this time.

**ISSUE 29:** What system and jurisdictional amounts should the Commission approve as PEF's final 2008 prudently incurred costs for the Levy Units 1 & 2 project?

OPC: No position at this time.

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

OPC: No position at this time.

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

OPC: No position at this time.

**PEF'S 2010 CAPACITY COST RECOVERY CLAUSE AMOUNT**

**ISSUE 32:** Should the Commission approve PEF's alternative cost recovery proposal, as set forth in PEF's Petition and supporting Testimony, as to recovery of NCRC costs?

OPC: The Citizens do not object to PEF's requested cost recovery being lower. At this time we do not have a position on the determination of carrying costs associated with voluntary deferral of costs already approved.

**ISSUE 32A:** If the answer to Issue 32 is yes, what is the total jurisdictional amount to be included in establishing PEF's 2010 Capacity Cost Recovery Clause factor?

OPC: No position at this time.

**ISSUE 32B:** If the answer to Issue 32 is no, what is the total jurisdictional amount to be included in establishing PEF's 2010 Capacity Cost Recovery Clause factor?

OPC: No position at this time.

**5. STIPULATED ISSUES:**

None.

6. PENDING MOTIONS:

None.

7. STATEMENT OF PARTY'S PENDING REQUESTS OR CLAIMS FOR CONFIDENTIALITY:

None.

8. OBJECTIONS TO QUALIFICATION OF WITNESSES AS AN EXPERT:

None at this time.

9. STATEMENT OF COMPLIANCE WITH ORDER ESTABLISHING PROCEDURE:

There are no requirements of the Order Establishing Procedure with which the Office of Public Counsel cannot comply.

Dated this 10th day of August, 2009.

Respectfully submitted,

J.R. Kelly  
Public Counsel

s/ Charles J. Rehwinkel  
Charles J. Rehwinkel  
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Attorney for the Citizens  
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**CERTIFICATE OF SERVICE**

**I HEREBY CERTIFY** that a true and foregoing **PREHEARING STATEMENT OF THE OFFICE OF PUBLIC COUNSEL** has been furnished by electronic mail and U.S.

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