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090079-EI

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In Re: Petition for Increase in Rates by Progress Energy Florida, Inc.

c. Document being filed on behalf of the Florida Retail Federation.

d. There are a total of 70 pages.

e. The document attached for electronic filing is the Posthearing Statement and Brief of the Florida Retail Federation in both Word and PDF formats.

(see attached files: FRF.PostHearingBrief.Final.10-16-09.doc; FRF.PostHearingBrief.10-16-09.pdf)

Thank you for your attention and assistance in this matter.

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BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In Re: Petition for Increase in Rates by Progress Energy Florida, Inc.	)))	DOCKET NO. 090079-EI FILED: October 16, 2009

POSTHEARING STATEMENT AND BRIEF OF THE FLORIDA RETAIL FEDERATION

The Florida Retail Federation (the "FRF"),[1] pursuant to the Prehearing Order in this docket, Order No. PSC-09-0638-PHO-EI, and the Order Establishing Procedure, Order No. 09-0190-PCO-EI, and pursuant to Rule 28-106.215, Florida Administrative Code ("F.A.C."), hereby submits the FRF's Posthearing Statement of Issues and Positions and Brief.

SUMMARY OF THE FLORIDA RETAIL FEDERATION'S REQUESTED RELIEF

Progress Energy Florida's requested increase of $500 million per year in additional base rate revenues is excessive and contrary to the public interest, and would, if granted, result in rates that are unfair, unjust, unreasonable, and greater than necessary to be fairly compensatory to the utility. In fulfilling its statutory mandate to regulate public utilities in the public interest, the Commission must ensure that Progress provides safe, adequate, and reliable electric service to its customers at the lowest possible cost, and Progress agrees that this is its duty. Competent, substantial evidence of record demonstrates that Progress can, in fact, provide safe, adequate, reliable service, and have an opportunity to earn a reasonable return on its investment, with <u>no</u> increase – and even with a modest decrease – in its base rates. Accordingly, based on the evidence, the Commission should deny Progress's request and should instead either keep the Company's existing base rates in place or reduce those rates by up to $35 million per year.

[1] In this Posthearing Statement and Brief, the following additional abbreviations are used: "Consumer Intervenors" refers collectively to the FRF, the Office of Public Counsel, Attorney General Bill McCollum, PCS Phosphate, Inc., the Florida Industrial Power Users Group, and the United States Department of the Navy. "Progress," "PEF," and "Company" refer to Progress Energy Florida. "Commission" refers to the Florida Public Service Commission. Citations to the hearing transcript are in the form "TR (page number)," with the name of the witness preceding the TR cite where appropriate. Citations to hearing exhibits are in the form "EXH (Exhibit number) (page number)."

In determining a utility's fair, just, and reasonable rates, the Commission generally has the legal ability to choose within the range of competing reasonable values on each cost-determining factor in dispute, provided that the Commission's decisions must be supported by competent, substantial evidence of record. To fulfill its statutory duty to ensure, in protecting the public interest, that Progress provides safe, adequate, reliable service at the lowest possible cost, the Commission should – indeed, arguably must – choose the lowest value supported by competent, substantial evidence for each cost-determining factor in the case.

When the Commission follows this clear, statute-based approach in this case, the evidence shows that the Commission should hold Progress's base rates at their current levels, or reduce them, for the following reasons.

Return on Equity. Progress's proposed base rates are based on its over-reaching, unreasonable requested rate of return on common equity ("ROE"), 12.54% after taxes, which corresponds to a return greater than 20% before taxes, while the Public Counsel's witness supports – by competent, substantial evidence – an after-tax ROE of 9.75%. Choosing the lowest value supported by competent, substantial evidence **reduces PEF's requested increase by roughly $142 million per year**.

Depreciation Surplus Amortization. By its own admission, Progress has an accumulated depreciation reserve surplus of $646 million. The Commission's policy is to rectify depreciation reserve imbalances, whether positive (surpluses) or negative (deficits), as quickly as possible, so long as doing so does not jeopardize the financial integrity of the utility. This is fully consistent with the maxim that the purpose of a fully litigated rate case is to true up all regulatory accounts. Here, competent, substantial evidence of record demonstrates that the Commission can and should follow this policy, and that doing so will promote and serve the goal of enabling Progress to provide safe, adequate, reliable service at the lowest possible cost to customers. This evidence shows that the Commission should **reduce PEF's rate request by a net of approximately $149 million per year** to amortize the surplus, and that it can do so while preserving PEF's financial integrity.

<u>Capital Structure</u>. The Company's proposed capital structure includes 53.90 percent equity; OPC's witness Prof. Randall Woolridge recommends a modestly lower value, 50 percent, for ratemaking purposes, and FIPUG's witness Jeffry Pollock supports this 50 percent value. The Company also asks that its rates be set on the basis of an adjustment, per the treatment of one rating agency, that would impute $711 million of additional equity, associated with long-term power purchase agreements, into the capital structure. The Commission should use the more reasonable 50% equity ratio and reject the imputed equity adjustment sought by the Company.

<u>Depreciation Expense</u>. Competent substantial evidence, particularly the testimony of Citizens' witness Jacob Pous, supports **<u>reducing PEF's depreciation expense, and thus PEF's requested revenue requirements, by $113 million per year</u>**.

<u>Operating & Maintenance Expense</u>.

In many cases, the Company's requested O&M expenses exceed the Commission benchmarks and represent sharp spikes above prior-year O&M costs. Competent substantial evidence demonstrates that the Company's excessive rate hike request reflects overloading of unsupported costs into the test year. The Commission should reject Progress's scheme to inflate O&M expenses in the test year and make the following adjustments to O&M expense.

<u>O&M Expense – Incentive Pay, Excessive Pay Raises, Unfilled Positions, and Fringe Benefits</u>. Choosing the lowest value supported by competent, substantial evidence **<u>reduces PEF's requested increase by roughly $47.5 million per year</u>**.

<u>O&M Expense – Storm Reserve Accrual</u>. Progress seeks to increase its storm reserve accrual from $6 million per year to $14.9 million per year. Competent, substantial evidence of record, specifically including the fact that PEF's storm reserve account is <u>already</u> effectively at the company's own proposed target level of $153 million, demonstrates that PEF's base rates in this case should be set using a value of $0 per year for the storm reserve accrual. The Commission should choose the lowest value for storm reserve accrual supported by competent, substantial evidence, and should accordingly **<u>reduce PEF's rate increase request by $14.9 million per year</u>**.

O&M Expense – Other. Choosing the lowest values supported by competent, substantial evidence for other O&M expense items, including transmission and distribution vegetation management expenses, power operations maintenance expenses, rate case expense, other administrative & general expenses, and other items, **reduces PEF's requested increase by an additional amount of approximately $70 million per year**.

As discussed above, the Commission is statutorily charged to regulate Progress Energy Florida in the public interest, and to ensure that PEF's rates are fair, just, and reasonable. As the Commission considers the issues in this case in light of its duty to regulate in the public interest, the Commission must also consider the current state of Florida's economy. While the facts that Florida's unemployment is much greater than the national average, and that Florida has the highest foreclosure rates in the country, are not themselves determinative of whether PEF's rates should be increased or decreased, these facts obviously relate to the public interest and the Commission must therefore be mindful of them, if only as a powerful reminder that the Commission must ensure that Progress provides safe, adequate, reliable service at the lowest possible cost.

Altogether, these adjustments would reduce PEF's requested increase by approximately $535 million, indicating that the Commission should reduce PEF's rates by $35 million per year, and that PEF would still be able to provide safe, adequate, reliable service, including being able to raise needed capital, with its new, lower rates. Alternatively, the Commission should simply deny Progress's petition for increased base rates and leave the Company's base rates as they are.

INTRODUCTION AND STATEMENT OF THE CASE

This case was initiated by Progress Energy Florida when it filed its petition for rate increase, minimum filing requirements (MFRs"), and direct testimony on March 20, 2009. PEF seeks the Commission's authority to raise its rates by $499,997,000 – rounded for all practical purposes to $500 million, or half a billion dollars – per year. This is the largest rate increase request in the history of Progress and its predecessor in name, Florida Power Corporation. The Florida Retail Federation, the Citizens of Florida ("Citizens") represented by their Public Counsel, the Attorney General of Florida, PCS Phosphate, Inc., the Florida Industrial Power Users Group ("FIPUG"), and the U.S. Department of the Navy all intervened in the docket and collectively believe that the Company's request should be denied and that, in fact, Progress can provide safe, adequate, reliable service, earn a reasonable return, and raise adequate capital with a rate decrease of approximately $35 million per year.

The Commission's statutory mandate is to regulate in the public interest. Fla. Stat. § 366.01 (2009). As a public utility subject to the Commission's plenary regulatory jurisdiction, Progress's rates must be fair, just, reasonable, and not unduly discriminatory. Fla. Stat. §§ 366.03, 366.04, 366.05(1), 366.06(1). The Company is entitled to the opportunity to earn a reasonable return on its capital reasonably and prudently invested, and actually used and useful in providing the public utility electric service for which it has a legal monopoly within its service territory. Fla. Stat. § 366.06(1).

RELEVANT HISTORY & ECONOMIC CONTEXT

Progress attempts to couch its present requested base rate increase in the context of its base rates being virtually unchanged for the past quarter century. See Dolan, TR 119, 121, 128-29. This is an apparent effort by Progress to persuade the Commission, and its customers, that because its base rates haven't increased significantly in the past, it should simply be allowed to do so now. Not so fast: While this fact is technically true, it is misleading: Progress's "base rates" are close to their 1984 levels, but PEF's total rates are much higher, and a substantial part of the overall increase is accounted for by new surcharges that recover production plant type cost items. EXH 280; Dolan, TR 2696-99. These include cost recovery charges to environmental control costs; nuclear development, preconstruction costs, and construction interest; capacity costs; and storm restoration costs.

More significantly, the issue in this docket is whether Progress actually needs a rate increase in order to provide safe, adequate, reliable service at the lowest possible cost. In the context of this crucial issue, it is worth briefly examining the history of Progress's rates and earnings. The historical record, evidenced by the Commission's orders, demonstrates that, throughout the past 25 years, Progress has consistently overreached in its rate increase requests, that Progress has earned adequate and even high returns, and that Progress has successfully provided safe, adequate, reliable service, and been able to raise capital, with returns far less than the 12.54% after-tax ROE it has requested in this case.

In 1983, PEF's predecessor in name, Florida Power Corporation ("FPC"), filed a request for a rate increase of approximately $124 million, including $83 million for the projected revenue requirements for the Crystal River 5 power plant. The Commission granted an increase of $10,182,000 effective in October 1984 and $83 million for CR 5 effective in January 1985, reflecting a total award of approximately 75% of FPC's request. PSC Order No. 13771, Docket No. 830470-EU. In 1987, pursuant to PSC Order No. 16862, in Docket No. 861096-EI, FPC gave a one-time refund of $54 million to reflect a reduction in income tax expense; the same order prescribed a reduction in FPC's ROE from 15.55% to 12.50%. In 1987, Occidental Chemical initiated a rate reduction case asking the Commission to order FPC to reduce its rates by $362 million; FPC filed Minimum Filing Requirements ("MFRs") claiming that a reduction of $61.7 million would be appropriate. The case was settled by a settlement that resulted in a permanent base rate reduction of $121.5 million and an additional one-time refund of $18.5 million. PSC Order No. 18627, Docket No. 870220-EI. In the same docket, the Commission subsequently approved an additional base rate increase of $10.7 million by Order No. 20632, effective in January 1989. The total reductions were thus substantially greater than those proposed by FPC, and substantially less than proposed by Occidental. In Docket No. 891298-EI, through Order No. 22437, the Commission continued a base rate credit (rate reduction) of $11.9

million, effective in January 1990. In Docket No. 900935-EI, that credit, having served its purpose, was discontinued by Order No. 23910, effective in January 1991.

FPC initiated a new general rate case in 1991, seeking a permanent base rate increase of approximately $145 million per year; that request was later reduced to $132 million per year based on certain Commission audit findings and a voluntary reduction by FPC. The Commission granted a total increase of $85.7 million in three steps beginning in November 1992 with the last step taking effect in November 1993. Order No. PSC-92-1197-FOF-EI at page 8. This reflected an increase of approximately 59 percent of FPC's initial request.

In 2000, the Commission initiated a review of FPC's earnings, including consideration of the effects of the acquisition by Carolina Power & Light Company ("CP&L") that formed Progress Energy. That proceeding, in Docket No. 000824-EI, resulted in a permanent base rate reduction of $125 million and a one-time refund of $35 million in 2002. Order No. PSC-02-0655-AS-EI at 2-3 (the "2002 Progress Settlement"). The 2002 Progress Settlement included a revenue-sharing plan that led to further refunds of more than $50 million. In 2005, Progress initiated another general rate case, Docket No. 050078-EI, in which it sought a permanent base rate increase of $205.6 million. That docket, too, was settled with Progress agreeing to a base rate freeze through 2009 and also agreeing to a revenue-sharing plan; the Consumers agreed to allow Progress to increase its base rates when its Hines 2 and Hines 4 units came on line at later dates. Order No. PSC-05-0945-S-EI.

FPC's and PEF's rate case history over the past quarter century, then, is characterized by requests that the Commission always found excessive, or that FPC or PEF agreed implicitly were excessive by agreeing to larger reductions in settlements. Even in 1987, when FPC proposed reductions of $61.7 million in response to Occidental's rate reduction complaint, the Company settled for a reduction approximately twice its original proposal. In the Commission-initiated 2000 earnings review docket surrounding the acquisition by CP&L, FPC (soon to be PEF) agreed to a permanent base rate decrease of $125 million per year. Then in 2005, the Company agreed to settle a case in which it sought $205 million a year with a base rate freeze.

Also during much of this time, FPC and PEF were earning substantial ROEs. Between 1998 and 2004, the Company's lowest achieved ROE was 12.33% in 1998 and its highest achieved ROE was 13.90% in 2002. EXH 296. In 2005, PEF's ROE dipped to 8.8%, but rebounded to 11.0% in 2006 before stabilizing at 9.70% in 2007 and 9.71% in 2008. EXH 296.

Granted, this is a new case and the evidence will show what it shows, but the Commission cannot help but recognize the quarter-century-long pattern of FPC's and PEF's invariably asking for greater increases (or smaller decreases) than the Commission found reasonable, nor can Progress avoid its own ROE data for the past 11 years, which show that it has earned substantial returns while reducing its rates at the Commission's initiative and agreeing to a base rate freeze in 2005, after filing what was then the largest rate increase request in its history.

THE STATUTORY CONTEXT AND STANDARD OF PROOF

The Commission regulates public utilities, including Progress, pursuant to several sections of Chapter 366, Florida Statutes.[2] Section 366.01 provides:

> The regulation of public utilities as defined herein is declared to be in the public interest and this chapter shall be deemed to be an exercise of the police power of the state for the protection of the public welfare and all the provisions hereof shall be liberally construed for the accomplishment of that purpose.

(Emphasis supplied.) Section 366.03 provides in pertinent part:

> All rates and charges made, demanded, or received by any public utility for any service rendered . . . shall be fair and reasonable.

Section 366.041 provides in pertinent part:

> In fixing the just, reasonable, and compensatory rates, charges . . . .

Section 366.05 provides in pertinent part:

> In the exercise of such jurisdiction, the commission shall have power to prescribe fair and reasonable rates and charges . . . .

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[2] All citations herein to the Florida Statutes are to the 2009 edition.

Section 366.06(1) provides in pertinent part:

> . . . the commission shall have the authority to determine and fix fair, just, and reasonable rates that may be requested, demanded, charged, or collected by any public utility for its service.

The standard of proof for the Commission's decisions in this case is a preponderance of the evidence. In Re: Petition of Florida Power & Light Co. for Authority to Increase Its Rates and Charges, FPSC Docket No. 810002-EU, Order No. 10306, 1981 WL 634490 at 7. The Commission's decisions must be supported by competent substantial evidence of record, but once thus supported, they are not subject to reversal on factual grounds. United Tel. Co. v. Mayo, 345 So. 2d 648, 654 (Fla. 1977).

Where there is competent substantial evidence of record supporting different positions, the Commission has discretion to decide on either position or, at least generally, on any position intermediate between the competing ends of a continuum. Id.; Gulf Power Co. v. Wilson, 597 So. 2d 270, 273 (Fla. 1992); In Re: Application of Gulf Power Company for Authority to Increase Its Rates and Charges, FPSC Docket No. 800001-EU, Order No. 9852, 1981 WL 634110 at 4; Gulf Power Co. v. Bevis, 296 So. 2d 482, 487 (Fla. 1974); City of Miami v. Florida Public Service Comm'n, 208 So. 2d 249, 253 (Fla. 1968). Taken together, the statutes and case law recognize that it is the utility's duty to provide safe, adequate, reliable service at the lowest possible cost, and it is the Commission's statutory mandate to set Progress's rates accordingly. Exercising its discretion to choose within ranges of costs, or cost-determining factors, the Commission must base Progress's rates on the lowest possible values, provided that doing so does not prevent Progress from having an opportunity to earn a reasonable return on its investment. To allow Progress to charge any more than that would be unfair, unjust, and unreasonable to Progress's customers; to force Progress to charge less than that would be unfair, unjust, and unreasonable to Progress.

THE FLORIDA RETAIL FEDERATION'S BRIEF ON SPECIFIC ISSUES

SUMMARY

Progress Energy Florida's requested rate increase of $500 million per year in additional base rate revenues is excessive and contrary to the public interest. In fulfilling its mandate to regulate in the public interest, the Commission should set Progress's rates at levels sufficient to enable Progress to provide safe, adequate, reliable service at the lowest possible cost, consistent with affording PEF the opportunity to earn a reasonable return on its investment. Following this principle will result in rates that are fair, just, reasonable, compensatory, and not unduly discriminatory. Competent substantial evidence of record shows that the Commission should, in carrying out this mandate, either deny Progress's rate hike request in its entirety or reduce PEF's rates by up to $35 million per year.

Even in ordinary or "good" economic conditions, PEF's request would be overreaching and unreasonable, at a minimum because of the overreaching, unreasonable rate of return on equity that PEF has requested and because of PEF's proposal to avoid flowing back its huge depreciation reserve surplus to the customers who created it, as well as because of PEF's other inflated cost requests that are discussed below. In today's economic circumstances, with Florida's unemployment rate at 10.7%, EXH 266, TR 265, much higher than the national rate, and with Florida's foreclosure rate the highest in the United States, EXH 267, see also TR 266, and with many, many customers turning out to tell the Commission and Progress that they cannot afford the proposed increases,[3] Progress's request represents an almost flagrant disregard for the

[3] The transcripts of the customer service hearings reflect many such statements by customers and their elected officials. See, e.g., Inverness Customer Service Hearing TR 20, 21, 28, 73, 114, 126, 130, 133-34, 141, 153, 162; St. Petersburg Customer Service Hearing TR 12-14, 18, 81, 89-90, 95-97, 109, 133, 145, 160, 161-62; Clearwater Customer Service Hearing TR 15-16, 80, 81, 105, 110, 116, 120, 144, 152-53.

economic welfare of Florida and its customers. Progress claims to recognize the difficult economic times facing Floridians, TR 265-267, 2626, but did not perform any analyses to even consider the impact of their proposed request.

Progress' President did not know whether Progress undertook any effort to analyze the impact on employment in its service area of taking an additional $500 million a year from its customers and transferring it to PEF employees, management, vendors, and shareholders. TR 267. Similarly, Progress' President did not know whether Progress undertook any analysis of the impact of its proposed rate increase on customer spending. TR 266-67.

When the Commission considers the terrible plight of Florida's depressed economy and the overwhelming economic challenges facing Florida's individual citizens, households, and businesses, the public interest requires that the Commission reject Progress's requested rate increase.

The Florida Retail Federation is not, however, in any way suggesting that the Commission should deny Progress's requested rate hike or reduce Progress's rates merely because higher rates will impose economic hardship on individuals and businesses. The FRF recognizes as well as any party or individual that "there is no such thing as a free lunch," and that PEF's rates will be high for all, and unaffordable for some, even if the Commission denies PEF's rate hike request altogether. The point is that the Commission must consider these strong public interest concerns given the state of Florida's hurting economy, and if there were any doubt at all on any issue in this case, the public interest sword should cut that much more strongly and sharply against PEF's request.

Progress acknowledges its duty is to provide safe, adequate, reliable service at the lowest possible cost, Dolan, TR 257, and the Commission's duty under Chapter 366 is to set rates that will enable Progress to do exactly that, no more and no less. The competent, substantial evidence of record in this proceeding demonstrates that Progress can, in fact, provide safe, adequate, reliable service at its current rates and authorized revenues, and even at lower rates, while still enjoying the opportunity to earn a reasonable return on its investment and while maintaining sufficient financial integrity to be able to attract necessary capital for its investments and operations.

The following sections of this posthearing brief address major issue areas, including:

I. The proper rate of return on equity to be used in setting PEF's revenue requirements and rates in this case

II. The proper capital structure

III. Ratemaking treatment of Progress's $646 Million accumulated depreciation reserve surplus

IV. Depreciation expense

V. Operating and Maintenance Expense

A. O&M Expense - Incentive Pay

B. O&M Expense - Labor Costs

C. O&M Expense - Storm Reserve Accrual

D. Other O&M expenses

I. Rate of Return on Common Equity (Issue 47)

Return on common equity, or "ROE," is the measure of return or profit to the utility's shareholders. It is essentially the amount "left over" as net operating income after all of the utility's expenses, including debt service, have been paid and also including recorded depreciation expense and taxes. In setting a utility's base rates, the Commission must use a value for ROE that is applied to the equity component of the utility's capital structure in order to compute the amount of return that the utility's customers will be responsible for. Once set, the base rates remain unchanged until further order of the Commission, so between rate cases, the actually achieved ROE will fluctuate. See, e.g., EXH 296, which shows that PEF's achieved ROEs ranged from 8.80% to 13.90% over the period 1998-2008.

The guiding principle that the Commission uses in determining what ROE to use in setting rates is whether it provides a fair return on investment, and whether it provides the utility with sufficient capability to attract capital. Naturally, the utility's shareholders desire higher returns, so they want the Commission to use a higher ROE in setting rates. Also naturally, customers want the Commission to use a lower ROE in setting rates, so that their rates will be less than with a higher ROE. As discussed throughout this brief, Progress's duty in operating its system, and the Commission's duty in setting Progress's rates, is to set rates at a level sufficient for Progress to provide safe, adequate, reliable service at the lowest possible cost. In the context of the ROE issue, then, the Commission must choose the lowest ROE value that enables PEF to provide safe, adequate, reliable service at the lowest possible cost, provided that that ROE value must be fair to PEF's equity investors and sufficient to enable Progress to raise capital.

Progress has earned substantial returns on common equity over the past decade, ranging from a high of 13.90% in 2002 to a low of 8.80% in 2005. EXH 296. Between 2002 and 2009, Progress reduced its base rates in 2002, agreed to a base rate freeze in 2005, and made refunds in some years pursuant to the revenue-sharing provisions of the 2002 and 2005 Progress Settlements. Also during this time, PEF provided safe, adequate, reliable service while operating under those Settlements. In 2007, Progress provided safe, adequate, reliable service while earning an ROE of 9.70%, and Progress also provided safe, adequate, reliable service in 2008 with an ROE of 9.71%. Toomey, TR 1846-47. During this period, including 2007 and 2008, Progress has been able to raise capital and access capital markets. Toomey, TR 1847.

PEF's requested ROE in this case, 12.54% after taxes, is unreasonable, unjustified, and not necessary for PEF to provide adequate service, to have an opportunity – with prudent management – to earn a reasonable return on its investment, or to attract capital. An abundance of competent substantial evidence supports this conclusion.

Recent PEF History. First, the Commission needs only to look at the most recent history of PEF's operations and earnings to conclude that Dr. Woolridge's recommended ROE of 9.75% is reasonable and sufficient for PEF to provide adequate service while earning a reasonable return and being able to raise capital. PEF's Vice President of Finance, Peter Toomey, testified that in 2007, Progress provided safe, adequate, reliable service while earning an ROE of 9.70%, and also that Progress provided safe, adequate, reliable service in 2008 with an ROE of 9.71%. Toomey, TR 1846-47. During this period, including 2007 and 2008, Progress has been able to raise capital and access capital markets. Toomey, TR 1847.

Current National ROE Awards. Next, the Commission should look to what other regulatory commissions throughout the United States are awarding for ROEs in the present timeframe. Exhibit 264 lists all (with no identified exceptions) rate case decisions entered in 2009 in the U.S., including the jurisdiction, the utility, the utility's ROE request, and, where applicable, the regulatory authority's ROE determination. The average for all ROE awards made by regulatory commissions in the U.S. in 2009 was 10.51%. EXH 264. The highest ROE even requested in any of the cases decided this year was 12.5%. EXH 264. Progress competes for capital with electric utilities throughout the U.S., including those listed in Exhibit 264. Sullivan, TR 4203-08. No evils appear to have befallen the utilities shown in Exhibit 264. The

Commission should particularly note that Progress's own witness, Dr. James Vander Weide, is presently testifying in a North Carolina rate case in support of Duke Energy's request for a rate increase, in which Duke is requesting that its rates be set using an ROE of 11.5% Vander Weide, TR 1427.

Progress Operates With Very Low Risk of Not Recovering Its Expenses. Under Florida's regulatory regime, Progress is blessed with a very, very high degree of certainty for recovering the substantial majority of its costs. Using the cost recovery clauses[4] and charges, and other line-item charges, provided for by Commission practice and Florida Statutes, PEF recovers 60-65% of its total revenues through such charges. Slusser, TR 1569-70. Correspondingly, Progress faces very, very low risks of cost disallowance for these cost items. In fact, PEF's President Vincent Dolan agreed that the total amounts disallowed over the past 4 years were about $20 million out of total amounts sought for recovery through those clauses of about $8 Billion (0.25%).[5] Dolan, TR 294-95.

Prof. Woolridge's Testimony. The Citizens' witness, Prof. J. Randall Woolridge, prepared analyses using standard financial modeling techniques, and using standard techniques for selecting a group of comparable utility companies, to estimate the required rate of return on equity for PEF in this case. PEF's witness, Dr. James Vander Weide, prepared competing

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[4] The cost recovery clauses and associated charges, and line item recovery charges, include: Fuel and Purchased Power Cost Recovery Clause, Capacity Cost Recovery Clause, Energy Conservation Cost Recovery Clause, Environmental Cost Recovery Clause, Nuclear Cost Recovery Clause (charges for which are recovered within the Capacity Cost Recovery Charge), Storm Charge, Franchise Fee line item recovery, and Gross Receipts Tax line item recovery.

[5] Of course, even those small amounts were only disallowed after evidentiary proceedings in which Progress had an opportunity to prove, but did not succeed in proving, to the Commission that the amounts were reasonable and prudent.

analyses. Probably the most that anyone can say is that the Commission is presented with competing experts, both of whose testimony is competent and substantial.

Concerns Regarding PEF's Bond Rating and Long-Term Debt Costs Do Not Provide a Basis for Setting the ROE At or Near 12.54%. PEF attempts to persuade the Commission that it won't achieve its desired bond rating, or that its costs of capital will be higher, if it doesn't get a rate increase including a high ROE. However, there is no guarantee of a debt rating upgrade if ROE is set at PEF's requested level and even if PEF gets its entire requested increase, Sullivan, TR 1272-73, and there is no guarantee of a credit downgrade if PEF's rates are set using the ROE recommended by Dr. Woolridge. See also Sullivan, "I can't answer what Fitch will do or not do." TR 4160. Similarly, there is no evidence that PEF will not be able to attract capital with an ROE at 9.75%, or that its weighted average cost of capital will be adversely impacted – higher overall – if the Commission sets rates using the 9.75% value recommended by Dr. Woolridge.

Even if PEF's long-term debt costs were substantially higher, e.g., by 100 basis points, the increased debt cost would not come close to offsetting the dramatically greater costs that would result if the Commission sets rates using an ROE of 12.54%. This results principally from two reasons: first, obviously, the difference between the Company's requested ROE and Dr. Woolridge's recommended value is 279 basis points, but second, the ROE must be grossed up for income taxes using the Net Operating Income multiplier, which for PEF is approximately 1.6338. MFR A-1. Given PEF's desire for a heavier equity ratio, the impacts on customer costs of granting PEF a higher ROE would be even more severe. Allowing an ROE in the range requested by PEF is patently inconsistent with the Commission's duty to set rates that are sufficient for PEF to provide safe, adequate, reliable service at the lowest possible cost, and the

Commission must accordingly reject PEF's request in favor of a value close or equal to Dr. Woolridge's recommended 9.75% after-tax ROE.

Implications for the Levy Nuclear Project. Progress's attempts to suggest that a lower ROE would jeopardize the Levy Nuclear Project are a complete red herring. Progress knows, and investors know, that pursuant to the Nuclear Cost Recovery Charge ("NCRC") statute, Section 366.93, Florida Statutes, Progress will earn an overall return on its investment in the Levy Project until its in-service date that incorporates PEF's capital structure as of 2006 and an 11.75% ROE on its Levy investments. Sullivan, TR 4237. This is true even if Progress ultimately abandons the Levy Project. Section 366.93, Florida Statutes. This is because the statute provides that PEF shall earn on its nuclear investment at its Allowance for Funds Used During Construction ("AFUDC") rate that was approved in the 2005 Progress Settlement, because that was the rate in effect for PEF when the statute was enacted and because PEF submitted its need determination petition for the Levy Project before December 31, 2010. PEF's applicable AFUDC rate includes an 11.75% ROE and is calculated using the capital structure that was stipulated in the 2005 Progress Settlement. Dolan, TR 2713; Sullivan, TR 4237. Moreover, PEF's president, Vincent Dolan, even admitted that the Levy decision doesn't depend solely on the rate case decision. TR 2511-12. The decision depends on numerous other factors. Id.

The *Bluefield* and *Hope* Cases Only Require Reasonable Returns. Although PEF and other utilities would have the Commission believe otherwise, the decisions of the United States Supreme Court in Bluefield and Hope[6] do not require high or excessive ROEs. They simply require that rates be set at a level sufficient to cover the utility's legitimate operating costs and

[6] Federal Power Comm'n v. Hope Natural Gas Co., 320 U.S. 591 (1944); Bluefield Water Works & Improvement Co. v. Pub. Serv. Comm'n of West Virginia, 262 U.S. 679 (1923).

provide the utility with the opportunity, assuming prudent management, with sufficient funds to pay its debt service, provide a reasonable return on equity, maintain its credit at a satisfactory level and attract capital. Hope, 320 U.S. at 603. The return on equity must simply be commensurate with returns on investments in other enterprises with similar risks. Id.

The FRF and the other Consumer Intervenors are asking no more and no less than this. The FRF simply believes, based on competent substantial evidence, that PEF's risks are minimal and accordingly that its ROE does not have to be remotely close to its "ask" of 12.54% in order to attract capital. Progress competes in national capital markets; utilities operating in those national capital markets have been awarded an average ROE of 10.51% in 2009. EXH 264. The current risk-free rate of return, which is generally regarded as the rate on 20 or 30-year U.S. Treasury bonds, is about 4 percent; under s risk premium analysis, common sense would indicate that, where PEF recovers 60-65% of its total revenues through cost recovery charges, Slusser, TR 1569-70, and other line item charges, with virtually no risk of disallowance (and no risk of disallowance for reasonable and prudent costs), the extra risk is probably no greater than the 4.37% risk premium calculated by Dr. Woolridge. EXH 164. Surely no one believes that the risk of Progress not recovering its operating costs and its debt service, is significant, let alone sufficient to justify a return three times the risk-free rate.

Investors want certainty (Vilbert, TR 3999); a certain after-tax return of 9.75%, in times when such a return is very attractive, and where recovery of the substantial majority of expenses is assured through cost recovery clauses, and where financial market volatility, as indicated by the Volatility Index ("VIX") published by the Chicago Board of Exchange, has stabilized greatly since PEF filed its case in March 2009 (EXH 277; Vander Weide, TR 1426), is at least attractive, and probably generous. Certainly the vast majority of Florida's citizens would consider it to be generous.

No Departure from Constructive Regulation. The FRF is not advocating that the Commission depart from constructive regulation. The Commission provides highly constructive regulation to Progress and other public utilities by providing for them to recover, with virtual certainty, the substantial majority of their operating expenses through cost recovery charges.

What the Consumer Intervenors are really asking is that the Commission's ROE decision appropriately reflect the very low risks that PEF faces. The issues before the Commission are not about abandoning the Commission' s policies and practices of allowing Florida public utilities to recover the substantial majority of their total revenues through annually trued-up cost recovery charges and related line item charges (such as franchise fees and gross receipts taxes), but only about following the principles of Hope and Bluefield that utilities' returns are to reflect the risks that they actually face and be sufficient for them to attract capital, while also resulting in rates that are fair, just, and reasonable to customers. Progress and other Florida utilities face minimal risk in Florida's regulatory environment, and the ROE values used to set their rates should reflect those minimal risks.

Rate of Return on Equity: Conclusion

Abundant competent substantial evidence supports setting PEF's rates using an ROE value far less than PEF's overreaching request of 12.54% after taxes. Woolridge, TR 3037, 3039; EXH 163; EXH 164. PEF competes for capital with other utilities in national capital markets, and the average ROE award for cases decided in 2009 has been 10.51%. EXH 264. PEF's own witness, Dr. James Vander Weide, is supporting Duke Energy's request for an 11.5%

ROE in a contemporaneous rate case before the North Carolina Utilities Commission. Vander Weide, TR 1427.

Rather than focus on a "battle of dueling experts and models" between Professors Woolridge and Vander Weide, the Commission should pay close attention to practical, real-world facts. In addition to the compelling evidence that the U.S. average ROE award in 2009 has been 10.51%, the "proof in the pudding" that PEF can provide adequate service, maintain its credit, and attract capital with an ROE of 9.75% is that it has done so. This proof was provided by the testimony of PEF's Vice President of Finance, Peter Toomey, who admitted on cross-examination that PEF provided safe, adequate, reliable service in 2007 while it earned an ROE of 9.70%, TR 1846, EXH 296, and that PEF also provided safe, adequate, reliable service in 2008 when it earned an ROE of 9.71%, TR 1847, EXH 296. Mr. Toomey also testified that PEF was able to raise capital in both 2007 and 2008. TR 1847.

Choosing the lowest ROE rate supported by competent substantial evidence, which is Dr. Woolridge's recommended 9.75%, will enable Progress to have an opportunity to earn a reasonable rate of return on investment while being able to access capital markets, while preserving its financial integrity, and while providing safe, adequate, reliable service to its customers. The Commission should note especially that this ROE is higher than PEF achieved in 2007 and 2008, when it both provided safe, adequate, reliable service and was able to raise capital for its needs.

II. Capital Structure (Issues 39-44)

Since equity costs more than debt, a higher proportion of equity (or "equity ratio") in a utility's capital structure will result in higher rates. Progress proposes a capital structure that includes 53.90% equity, which also includes $711 million of imputed – not actual – equity as a purported balancing amount to what PEF claims is the equivalent of imputed debt for payments pursuant to long-term power purchase agreements. The Consumer Intervenors, including both OPC witness Woolridge and FIPUG's witness Jeffry Pollock, recommend and support a 50% equity ratio, and also that the Commission should reject PEF's proposed imputed equity adjustment.

A. Equity Ratio (Issue 42)

As noted above, the Company proposed a capital structure using 53.90% equity and including $711 million of imputed equity. Dr. Woolridge testified that PEF's proposed capital structure is inappropriate for at least 3 reasons: (1) PEF's equity ratio is high relative to other electric utility companies; (2) PEF's proposal includes $711 million in imputed, not actual, equity; and (3) PEF's proposal includes more common equity than is actually projected for the Company. TR 2958. The equity ratios for a group of comparable utilities selected by Dr. Woolridge average less than 43%. TR 2959. Equity ratios in the range of 40% to 50% are typical. Woolridge, TR 2961. Because of the relatively lower risk faced by regulated electric utilities, they can carry more debt without adversely affecting investors' perceptions of their overall risk relative to other possible investments in unregulated companies. Woolridge, TR 2961. PEF's "real" common equity ratio, excluding the non-existent imputed $711 million, is only 47.51%. In this light, Dr. Woolridge's recommended 50% equity ratio is fair, just, and reasonable to the Company. TR 2962. This recommended equity ratio also matches the Company's actual common equity ratio in the Company's projected capital structure. Woolridge, TR 2963, 2999.

Similarly, Mr. Pollock recommends using PEF's adjusted common equity ratio of 50.3%, excluding the imputed equity adjustment associated with PPAs. TR 3215. As shown in Mr.

Pollock's summary of bond ratings for all electric utilities that have an "A" rating from at least two of the three principal rating agencies, the average equity ratio for A-rated utilities is 50.2%. Pollock, TR 3214-15. This translates into a regulatory common equity ratio (which includes other sources of capital, such as customer deposits and investment tax credits, of 46.93%. Pollock, TR 3215.

B. Imputed Equity Adjustment for Power Purchase Agreements (Issue 41)

Through its proposed imputation of $711 million of equity to supposedly offset the presence of long-term commitments under power purchase agreements ("PPAs"), Progress has attempted to increase its revenues by increasing the amount of equity assumed for ratemaking purposes. TR 3213. Only one rating agency, Standard & Poor, makes such an adjustment. Pollock, TR 3208-09. The other two main rating agencies, Moody's and Fitch, do not. Pollock, TR 3208, 3210 (Moody's); Vander Weide, TR 1421-22 (Fitch). Moreover, Moody's clearly recognizes the risk-eliminating benefits of cost recovery clauses, such as are used in Florida, for utility recovery of PPA costs. Moody's regards PPAs with such pass-through capability as operating costs with no long-term-debt-like attributes. See TR 4245.

As recognized by the Commission in a recent rate case, this is inappropriate for ratemaking purposes, for a number of reasons. The Commission recognized that imputed equity "is not an actual equity investment in the utility," and that allowing the use of the imputed equity adjustment would allow the utility "to earn a risk-adjusted equity return without having actually made the equity investment." Order No. PSC-09-0283-FOF-EI at 35.[7] The Commission further found that there is no requirement that the utility make the adjustment. Id. In rejecting the same proposal in the Tampa Electric case, the Commission held that the utility (Tampa Electric) was

[7] In Re: Petition for Rate Increase by Tampa Electric Company, PSC Docket No. 080317-EI, Order No. PSC-09-0283-FOF-EI (April 30, 2009) (hereinafter "2009 TECO Rate Case Order").

"attempting to take a portion of S&P's methodology and use it for a purpose it was never intended." 2009 TECO Rate Case Order at 36.

Moreover, from a regulatory perspective, PPAs are not like debt. Woolridge, TR 3002. This is largely because, at least in Florida, the Commission ensures that utilities can recover all payments made pursuant to Commission-approved PPAs. Woolridge, TR 3002. In addition, S&P's adjustments do not involve any changes in the utility's financial statements prepared in accord with GAAP accounting. Woolridge, TR 3002.

<u>Capital Structure & Imputed Equity - Conclusion</u>

At the bottom line, there is no competent substantial evidence by any rating agency representative or witness to support the imputed equity adjustment. One rating agency, Standard & Poor, makes such an adjustment in its analyses; the other agencies, Moody's and Fitch, do not. <u>No rating agency witness testified in this case</u>. Progress naturally wants treatment that provides it with more revenues. The Commission should reject the imputed equity adjustment, if for no other reason than that no rating agency witness is willing to face the Commission and attempt to explain the adjustment, which is patently contradicted by the Commission's longstanding policy and practice of ensuring full, dollar-for-dollar recovery of payments pursuant to Commission-approved PPAs. What we really have here is Progress attempting to increase its revenues by allowing an absent "tail" – Standard & Poor – to wag not only Progress but also the Commission and the pocketbooks of more than 3 million Floridians. The Commission should reject the imputed equity adjustment proposed by PEF in this case, just as it rejected the same proposal in the Tampa Electric Company rate case earlier this year. Pollock, TR 3207-3213; 2009 TECO Rate Case Order at 36.

III. Fair, Prompt Amortization of Depreciation Reserve Surplus (Issues 14 & 15)

By its own admission, Progress has an accumulated depreciation reserve surplus of $645.8 million. Robinson, EXH 84, Table 5f –FUTURE, page 2-79; Pous, TR 2020-21, EXH 135. The Public Counsel's witness Jacob Pous provided competent, substantial evidence, through detailed analyses, that demonstrate that PEF's reserve surplus is conservatively at least $858 million. EXH 135. The difference between the Company's $646 million value and Mr. Pous's $858 million value is that the Company uses inappropriately short depreciation lives and inappropriately low net salvage values, both of which result in over-collection of depreciation expense and thus greater reserve surpluses, i.e., the exact situation that PEF has already created. Progress and the Consumer Intervenors agree that any reserve imbalance surplus should be credited back to customers by amortizing the surplus over time. Progress further agrees that it would be best if there were no reserve surplus or deficit. Vilbert, TR 3998.

Progress and the Consumer Intervenors disagree only as to the time period over which the amortization and crediting back to customers is to occur: Progress wants to spread the amortization over 22 years, while the Consumers want the amortization of the huge surplus made over the next 4 years. The Consumers' position is more consistent with the maxim that a fully litigated rate case such as the instant docket should serve as the ultimate true-up of all regulatory accounts. See Pous, TR 2182-83. It has been 17 years since the Commission last decided revenue requirements for PEF (actually for Florida Power Corporation, PEF's predecessor entity).

The surplus has been created by PEF's collecting more revenue from previous customers, and booking more depreciation expense, than was necessary to reflect the actual depreciation of its assets. The Commission should follow its long-standing policy of dealing with material imbalances between the theoretical and actual reserves as soon as possible, so long as they do not adversely affect the financial integrity of the company. Order No. PSC-01-2270-PAA-EI at 1-2. The Commission should accept OPC's recommendation of amortizing $645,805,342 million of surplus depreciation reserves as a credit to customers to be amortized over a four-year period. Pous, TR 2046. This would eliminate much, but not all, of the surplus reserves that have been accumulated by the company while simultaneously providing a significant increase to the company's return on equity through the elimination of $161,456,336 million in expense each year for a four-year period until January 1, 2014. Pous, TR 2048.

Amortizing PEF's depreciation surplus over four years is necessary for at least a good start toward an "ultimate true-up" of PEF's depreciation accounts and to prevent the continuing intergenerational inequity that this surplus imposes on past and current customers who have paid to create it. The inequity is that they have overpaid, thereby subsidizing future customers. The further into the future the amortization corrections are made, the greater will be the intergenerational inequity between those customers who overpaid and the future customers who will be underpaying. Pous, TR 2038-40; see also witness Michael Vilbert's admission on cross examination that there is a closer match between PEF's customer base in 2008 and 2010 than between those in 2008 and years further in the future. TR 4001.

The Commission's declared policy is to cure reserve imbalances as soon as possible without negatively impacting a company's fair and reasonable return on its investment. Order No. PSC-01-2270-PAA-EI at 1-2. In the face of overearnings in past years, depreciation reserve deficiencies have been targeted by the Commission in order to book additional depreciation expense dollars that would result in lower reported earnings for the companies—thereby bringing the reported earnings in line with the allowed rate of return. Another alternative in these cases would have been to order a direct refund to customers. The Commission should reject, outright, any suggestion by the Company that a theoretical reserve deficiency or surplus is not real money. PEF's strategy of presenting multiple witnesses to cloud the issue by testifying that the theoretical reserve is not real, or just some hazy, ill-defined bit of data, or inconsistent with GAAP, is nothing more than a smokescreen. PEF is well aware that the Commission requires the theoretical reserve calculation in every depreciation study for a specific purpose, which is to provide a basis for rectifying imbalances.

Although PEF's witnesses attempt to claim that the more rapid amortization would violate Generally Accepted Accounting Practices ("GAAP"), they cannot point to any specific principle that would be violated. Additionally, the NARUC depreciation manual, EXH 311, explicitly recognizes that an accelerated amortization of reserve surpluses and deficits is acceptable practice: PEF would have the Commission believe that NARUC supports a policy that would violate GAAP. Nor can they explain how, if at all, the Commission's specifically articulated policy for accelerated amortization is inconsistent with GAAP. Given that PEF has, in fact, amortized prior depreciation reserve surpluses pursuant to Order No. PSC- 02-0655-AS-EI, which approved the 2002 Progress Settlement, the FRF believes that this suggestion is misplaced and that it verges on being absurd: the Commission would not approve the specific accounting treatment provided for in its Order if it violated Generally Accepted Accounting Principles.

The weight of competent substantial evidence on this issue supports the position advocated by the Citizens, the FRF, and the other Consumer Intervenors. In the first instance, the Citizens' principal depreciation witness, Jacob Pous, is a much more credible witness than PEF's witness Robinson. Mr. Pous is a registered Professional Engineer in 8 states, including

Florida. He has been accepted as an expert in utility depreciation accounting and other utility regulatory accounting subject areas in 17 states plus the District of Columbia and Canada. Beyond his credentials, which are overwhelmingly more impressive than Robinson's, Mr. Pous's work is substantive, detailed, and fully documented. As Mr. Pous testified in response to examination by Commissioner Skop, his depreciation study is far superior to the Company's depreciation because it is not possible for

> anybody to go to the company's depreciation study and find the basis for their proposals. It is not in there. It's not in his [PEF witness Robinson's] work papers. It's not in responses to data requests. I [OPC witness Pous] have a data response [from PEF] that says it's not an arithmetic process. It's an interpretive process. They didn't provide any other basis, narrative, explanations. I set forth parameters, gave you [the Commission] information, cited documents. I defy you again to go back to the company's study and find any of that information. We have generalized statements at best. They're vague at best. There's no documentation. And the company truly has the burden of proof in the process.

Pous, TR 2193-2194.

The Commission should accordingly reject all of PEF's other vain attempts to keep its over-collected depreciation funds for longer than it should. The Commission should follow its policies that were clearly articulated in the following orders. In Order No. 98-1763-FOF-GU, PSC Docket No. 980700-GU, the Commission stated:

> Our approach to reserve transfers is where significant surpluses and deficits exist, corrective reserve transfers between accounts should be considered. Significant imbalances are those that result in abnormal depreciation rates for the ongoing account.

In Order No. 01-2270-PAA-EI,[8] the Commission further stated:

> Reserve imbalances are primarily a matter of differences in current and past projections. Such deficiencies should be recovered as fast as possible, unless such recovery prohibits the company from earning a fair and reasonable return on its investment.

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[8] In Re: Request for Approval of New Depreciation Rates for Marianna Division by Florida Public Utilities Company, PSC Docket No. 010669-EI (November 19, 2001) at 1-2.

The Commission's policy to rectify depreciation reserve imbalances, whether positive (surpluses) or negative (deficits), "as fast as possible," so long as doing so does not jeopardize the financial integrity of the utility, is clear. Order No. PSC-01-2270-PAA-EI at 1-2. Here, the magnitude of the intergenerational inequity compels an immediate and sizeable departure from the remaining life approach to mitigate the extraordinary unfairness that would be imposed on current customers by PEF's proposal. Pous, TR 2041. The decision in this docket that is fair, just, and reasonable to all customers, past, present and future, is to eliminate the material intergenerational inequity in the future as soon as possible. The Commission can do nothing about past customers, because that is water over the dam, but the Commission can and should rectify this huge inequity for recent customers, who have paid and who, under PEF's proposal, will otherwise subsidize customers more than 20 years into the future.

Here, too, competent, substantial evidence of record demonstrates that the Commission can and should **reduce PEF's rate request by a net of approximately $149 million per year** ($161 million per year gross) to amortize the surplus, and that it can do so while preserving PEF's financial integrity. Lawton, TR 2233-35; EXH 177.

In terms of specific implementation of this equitable recommendation, the Commission should do the following:

1. Require the Company to rebalance its reserves in order to align the theoretical reserve with the actual reserve amount for each account based on the remaining life rates ordered by the Commission;

2. Require the Company book the excess depreciation reserves identified through the rebalancing process to a separate, unallocated, depreciation account;

3. Require the Company to amortize $646 million of the unallocated excess reserve to customers of record over a four-year period in order to eliminate the intergenerational inequity as soon as is reasonably practicable based on the percentage of each class's base rate revenues to total base rate revenues; and

4. Require the Company, as part of its annual report for the next four years, to recalculate annually the theoretical reserve in comparison to the actual reserve based on the depreciation rates authorized in this proceeding, and require the Company to reallocate its reserves to achieve equality between booked and theoretical reserve levels on a yearly basis, while booking any reserve surpluses to the unallocated excess reserve account based on Commission approval.

Financial Integrity

As discussed throughout this brief, Progress must provide safe, adequate, reliable service at the lowest possible cost, and the Commission must set Progress's rates at levels sufficient to enable the utility to fulfill its duty, provided that those rates must also be sufficient to provide the utility with the opportunity, assuming reasonable and prudent management, to earn a reasonable rate of return and to attract capital. Another way of saying this is that the utility's rates must be sufficient for it to pay its operating costs and maintain its financial integrity.

In this case, the adjustments proposed by the Consumer Intervenors' witnesses will, not surprisingly, reduce PEF's revenues and rates. The adjustments proposed for O&M and depreciation expenses can be expected to be a "wash" in that the Intervenors' witnesses advocate disallowing those costs because they are not reasonable and prudent, e.g., the $132 million of recommended disallowances for O&M expenses, or because they are not appropriately timed, e.g., the recommended reduction in depreciation expense of $113 million. In other words, substantial amounts of PEF's claimed O&M expenses are not reasonable, prudent, and necessary for the Company to provide adequate service, and the Company's claimed depreciation expenses are overstated because they reflect the Company's attempt to recover the "return of" its investment over periods that are too short.

Distinguished from O&M expenses and depreciation expense, the Consumers' proposed reductions in the Company's authorized return and the proposed adjustments to amortize PEF's accumulated depreciation reserve in a more equitable way, consistent with the Commission's specifically articulated policy for such amortization, will reduce depreciation cash flows while increasing ROE. The Commission's past policies dictate that reserve imbalances should be cured as fast as possible so long as they do not impair the Company's financial integrity. The measures or 'metrics" used to analyze financial integrity generally include measures of debt, cash flows, and interest requirements. According to OPC witness Daniel Lawton, the appropriate financial integrity metrics are: Cash From Operations divided by Interest (CFO/Interest, a numeric ratio); CFO as a percentage of Debt (CFO/Debt, in percent); and Debt Ratio (percent). Lawton, TR 2232, EXH 177.

Mr. Lawton analyzed the impacts of Mr. Pous's recommendation to amortize $646 million of PEF's depreciation surplus over 4 years. Mr. Lawton's analyses of the impacts of the depreciation surplus amortization show unequivocally that PEF's financial integrity metrics, on both a before-tax and after-tax basis, remain within acceptable ranges for a "BBB" rated utility, and even for an "A" utility. (Per Mr. Sullivan, PEF is rated BBB+ by Standard & Poor, A3 by Moody's, and A by Fitch. TR 1232.) Column B on Exhibit 177, page 1, shows that PEF's CFO/Interest ratio would be 4.07 times, well within the range for an A utility (3.0 to 4.5); that PEF's CFO/Debt percentage would be 29%, well within the A range of 25% to 45%; and that PEF's debt percentage at 43.28% would also remain squarely within the A range of 35% to 50%. Mr. Lawton concludes that even with the cash flow reduction resulting from the depreciation reserve amortization, Progress will "maintain solid financial metrics." TR 2233-34. As Mr. Lawton explained, correction of the depreciation reserve surplus will reduce Progress's rate hike request by approximately $149 million (net) without harming Progress. Such a rate reduction does not disallow expenditures, but rather corrects the rate of asset recovery. TR 2234-35.

Any analysis of financial metrics that might result from the Commission's decision in this docket must ignore all disallowed expenses accepted by the Commission. Again, disallowed expenses should not be part of this analysis, because the reason for disallowing any expenses is that they are not representative of PEF's actual 2010 expenses or are otherwise not reasonable and prudent. In the "proof in the pudding" department, what is known relative to this issue is that PEF, pursuant to the 2002 Progress Settlement, amortized $62.5 million per year of its previous depreciation surplus between 2002 and 2005, earned significant ROEs of 13.90%, 13.43%, 13.48%, and 8.8% (EXH 296) during those years, and that PEF also provided adequate service while earning an ROE less than that recommended by Dr. Woolridge in both 2007 (9.70%) and 2008 (9.71%), and that PEF was also able to raise capital during these years. Toomey, TR 1847. These facts tend toward the conclusion that PEF's financial integrity should be acceptable even with both the depreciation surplus amortization recommended by Mr. Pous and the ROE of 9.75% recommended by Dr. Woolridge. In view of the fact that no rating agency criteria was entered as evidence in this docket, this Commission should not leap to a conclusion that the Company needs more than a 9.70% or a 9.71% ROE in order to protect its bond rating in the future.

IV. Depreciation Expense (Issues 7-13 & Issue 75)

Following the principle that PEF is required to provide safe, adequate, reliable service at the lowest possible cost, and that the Commission is required to set rates accordingly, the Commission should follow the recommendations of the Citizens' witness Jacob Pous and reduce Progress's authorized revenue requirements by $113 million.

As detailed above, Mr. Pous's testimony is significantly more credible than that of PEF's witness. In addition to his clearly superior credentials, the substance and detail of Mr. Pous's testimony, and his depreciation study itself, are likewise superior to PEF's. As required by the Commission's depreciation rules, Mr. Pous's analyses were based on detailed analyses of specific plant items and included detailed supportive documentation. PEF's testimony and depreciation study failed to provide substantial, substantive supporting documentation. TR 2193-94.

PEF's positions regarding depreciation and its relationship to the financial integrity of the firm are misleading. The Commission must recognize the following facts.

- Obviously, the Company wants to increase its profits.
- PEF is adamantly opposed to any decrease in depreciation expenses resulting in higher ROE.
- PEF has requested a substantial increase in depreciation expenses as part of this case, even though historical depreciation rates have produced a huge surplus in the depreciation reserves as of the date of this filing.
- Revenues created through allowed depreciation expense is free cash flow that can be spent totally at the discretion of the parent company, Progress Energy, Inc.

Basic common sense would dictate that, in light of the surplus, PEF should support reduced depreciation rates in the future. Such action would increase the Company's profits, in line with the Company's desire to be more profitable, and it would serve to reduce the surplus in the future.

Depreciation Life for Combined Cycle Power Plants (Issue 12). One particular item that the Commission should consider is the Company's depreciation treatment of its combined cycle ("CC") power plants. PEF wants to depreciate its CC plants over 30 years. Prehearing Order at 24. Other Consumer Intervenors advocate a period of at least 35 years; the FRF advocates for a depreciation life of 40 years, for the reasons explained below. Of course, PEF will get more cash through higher rates if those rates are based on PEF's proposed shorter depreciation life.

A combined cycle power plant consists of a simple cycle combustion turbine ("CT") unit, which burns fuel that drives a turbine that in turn drives an electric generator, plus a "heat recovery steam generator" that captures some of the leftover heat in the exhaust gases from the CT to make steam, and a steam turbine generator that makes electricity as the steam drives it. See Crisp, TR 3509-11. Progress has several fossil steam units on its system, as well as several combustion turbines on its system. EXH 268. Several of PEF's steam units have already been in service for more than 40 years, and all are projected to remain in service for lives greater than 40 years. PEF's Ten-Year Site Plan, Exhibit 268, shows the ages of PEF's non-coal steam units to be between 35 and 66 years, and the projected retirements of the very oldest units, at the Suwannee station, are not until 2015. There are no projected retirement dates shown in the Ten-Year Site Plan for PEF's steam units at Anclote or for its coal units at Crystal River. EXH 268. Similarly, PEF's simple cycle CT units are between 9 and 41 years old, EXH 268, with the oldest units being considered for retirement or cold standby status in 2016, i.e., when the oldest units (at Avon Park and DeBary) would be approaching 50 years of age. This demonstrates that PEF has direct experience with the component parts of CC units, obviously using much older engineering technology than currently used for new CC units, and that PEF has operated such component parts for more than 40 years.

It follows that Progress's CC units, which are essentially a combination of simple cycle CTs and steam generators, should last well over 40 years. Moreover, Gulf Power Company, another Florida utility, is planning to construct and operate a new combined cycle unit that Gulf projects will have a 40-year life. EXH 314 (excerpt from Gulf Power's 2009 Ten-Year Site

Plan). Crips, TR 3519. Additionally, metallurgical engineering has improved substantially over the past 30-40 years. Crisp, TR 3517.

PEF's argument that CC units cycle on and off, or up and down, is not dispositive, if it has any merit at all. Many of PEF's generation units have been used for cycling duty over their lives. Crisp, TR 3511-12. PEF's argument that ambient environmental conditions will, or might, cause more rapid deterioration of its combined cycle units are also not persuasive: PEF has steam units and simple cycle CT generating units at or near the generating stations – Hines and Bartow – where its CC units are located. EXH 268 and EXH 313. In fact, PEF had steam units at Bartow that were over 50 years old when they were retired in June 2009, and still has simple cycle CTs at the Bartow site that are 37 years old, with no projected retirement date shown in the Company's Ten-Year Site Plan. EXH 268. Progress also has simple cycle CTs at its Intercession City station and its Avon Park station, EXH 268, both of which are inland and within 50 miles of the Hines station. EXH 313.

Competent substantial evidence supports the conclusion that PEF's combined cycle power plants will have useful lives of at least 40 years, and accordingly, the Commission should use this value for determining PEF's allowable depreciation expense and setting PEF's rates.

Additionally, Mr. Sorrick testified in support of PEF's generation fleet maintenance plan and activities. PEF's maintenance activities are designed to optimize the fleet of power plants and prolong the units' useful lives. Sorrick, TR 382. Customers pay for this maintenance and are therefore entitled to have the life extension benefits reflected in the depreciation rates. This also militates toward using a longer depreciation life for PEF's CC units in setting PEF's rates in this case.

Depreciation Expense- Summary and Conclusion. In summary, competent substantial evidence, particularly the testimony and exhibits of witness Jacob Pous, support the conclusion that PEF's claimed depreciation expense should be reduced by at least $113 million for the 2010 test year (in addition to the net credit of $149 million per year, $161 million per year on a gross basis, for timely, fair amortization of PEF's $646 million depreciation reserve surplus). *Following the principle that PEF is required to provide safe, adequate, reliable service at the* lowest possible cost, and that the Commission is required to set rates accordingly, the Commission should reduce Progress's authorized revenue requirements by $113 million for the 2010 test year.

V. Operating & Maintenance Expense (Issues 59-73)

Competent substantial evidence indicates that the Commission should reduce PEF's requested O&M expense by approximately $132 million. Schultz, TR 1916-68; EXH 170, Schedule C-2. The total adjustments include reductions in PEF's proposed storm accrual, payroll including incentive pay, employee benefits, rate case expense, transmission and distribution vegetation management, power operations maintenance expense, and other items. Several of these are discussed specifically in this section.

A. O&M Expense – Incentive Pay (Issue 66)

Incentive compensation is compensation over and above base pay based on the achievement of certain goals, e.g., corporate Earnings Per Share ("EPS") targets, cost reduction, or improved customer service. Schultz, TR 1933. Achievement of some goals will benefit shareholders, and some may benefit customers. In setting fair, just, and reasonable rates, incentive pay costs should be borne by the beneficiaries, or as OPC's witness Helmuth Schultz put it, "cost for incentives should follow the benefit." TR 1933. The vast majority of the incentive pay that can be awarded to PEF's employees is driven by benefits provided to shareholders, and accordingly, shareholders should bear the vast majority, and perhaps all, of the incentive pay costs.

As with all other cost items at issue in this case, the Commission must set rates that will allow PEF to recover its reasonable and prudent costs for providing safe, adequate, reliable service to PEF's customers at the lowest possible cost. With respect to incentive pay, a total of $37.4 million is at issue. EXH 170, Schedule C-3. PEF asks that its customers be responsible for that entire amount. However, the majority of the incentive pay is pegged to value provided to PEF's shareholders (actually Progress Energy, Inc.'s shareholders), under both the Employee Cash Incentive Plan and the Management Incentive Compensation Plan. Schultz, TR 1937; DesChamps, TR 3330-37. In fact, PEF's Management Incentive Compensation Plan states that the primary purpose of the Plan "is to promote the financial interests of the Company," Schultz, TR 1937, and the only goals that determine incentive pay under the Management Incentive Plan are corporate financial goals. DesChamps, TR 3336-37. Accordingly, only that percentage, if any, of incentive pay that rewards PEF employees for providing quality service to customers should be borne by customers, and the percentage pegged to providing value to shareholders should be borne by shareholders.

Witness Schultz reviewed the Company's incentive plans and did not find any reference to customers. TR1939. The Company's burden is to demonstrate that it needs any expense item, including incentive pay, to provide safe, adequate, reliable service to customers at the lowest possible cost; if the Company cannot document that its incentive pay program actually produces and rewards quality service to customers, there is no basis to support requiring customers to pay for these costs. Schultz, TR 1939. At least several other regulatory jurisdictions, including New

York, Vermont, Connecticut, and Washington, D.C. have disallowed incentive pay from being included in customer rates. Schultz, TR 1934, 1939-40. The Florida Commission should do the same, because these costs are incurred predominantly, if not entirely, for the benefit of PEF's shareholders, and not for the benefit of customers.

The Company's platitudes about needing to give employees incentive pay to attract and retain quality employees to provide quality service are plainly belied by the fundamental nature of PEF's incentive plans. If PEF needed to make such incentive payments to attract quality employees to provide quality service to customers, then its plans should reflect that goal. Instead, the Company's plans are dominated, perhaps entirely, by their emphasis on the Company's financial results, and accordingly, the incentive pay costs should be borne by the shareholders who benefit. Schultz, TR 1941.

According to PEF's witness Masceo DesChamps, under the Employee Cash Incentive Plan, each employee has a target incentive pay amount and can earn up to 150 percent of that amount in a given year. TR 3334. Half of the total, or up to 75 percent of the target, is pegged to Earnings Per Share ("EPS"), DesChamps, TR 3334, which is clearly a benefit to shareholders. EPS depends on cutting costs or increasing profits; neither equates to quality service to customers. The other half of possible incentive pay depends on performance relative to 10 factors; these factors vary from business unit to business unit. DesChamps, TR 3330-34. Some relate to customer service, some do not. The other 10 factors count equally, and an employee gets 5% for each of the first 5 factors met and 10% each for the second 5 met. When asked what the metrics are, Mr. DesChamps replied that there are safety goals, environmental index goals, service reliability, budget adherence goals, plant production goals, and efficiency type goals. TR 3330. He could not identify any specific service reliability goal. TR 3330. It could count for 5 percent or 10 percent out of the total 75 percent of possible target incentive pay, depending on whether the employee met more than 5 of the 10 business unit goals. Nor could Mr. DesChamps identify any specific generation efficiency goal, transmission losses goal, distribution losses goal, or any other goal that would directly relate to improved customer service. DesChamps, TR 3335.

Moreover, the Company's Management Incentive Compensation Plan has no goals that benefit customers; the Management Incentive Plan has only two goals, EPS and Earnings Before Interest, Taxes, Depreciation, and Amortization ("EBITDA"), and those only benefit shareholders. DesChamps, TR 3336. The goals for this plan do not include any specific performance goals along the lines of service reliability, efficiency, or the like. DesChamps, TR 3337.

PEF does not have a corporate goal, or any incentive reward criterion, for achieving lower rates or for keeping customers' rates low. DesChamps, TR 3335.

It is unfair, unjust, unreasonable, and probably nonsensical, for PEF to even ask customers to pay for providing value to the shareholders of PEF's parent company. Further bolstering this argument is the admission by PEF's witness Thomas Sullivan, during cross examination by the Public Counsel, that "the parent isn't there for PEF. The parent is there for its own needs . . . ." TR 4201-02.

The FRF believes that the most that customers should be asked to pay would be that percentage of PEF employees' incentive pay that is, in fact, triggered by outcomes of employee performance that demonstrably benefit customers. This is simple economic justice: payment for value received. To the extent that PEF has not demonstrated that any of the incentive pay is directly determined by outcomes that directly benefit customers, such as lower rates or better service, the entire amount of PEF's requested incentive pay should be disallowed. Schultz, TR 1940-41.

In light of PEF's duty to provide safe, adequate, reliable service at the lowest possible cost, and the Commission's duty to set rates accordingly, the Commission cannot reasonably require customers to pay for value provided to the shareholders of PEF's parent company. This would be unfair, unjust, and unreasonable. Accordingly, the Commission should deny PEF's requested allowance for incentive pay in its base rates, unless and only to the degree that PEF has established by competent substantial evidence that a definite portion of its incentive pay is tied directly to improved service to customers. Progress has not met this burden. This results in a $37.4 million reduction in PEF's requested base rate hike. Schultz, TR 1940. For authority, see Gulf Power Co. v. Wilson, 597 So. 2d 270, 273 (Fla. 1992); In Re: Application of Gulf Power Company for Authority to Increase Its Rates and Charges, FPSC Docket No. 800001-EU, Order No. 9852, 1981 WL 634110 at 4.

B. O&M Expense - Labor Costs – Payroll and Benefits (Issues 63-65 & 67)

Progress is asking for pay raises in the range of 3.5% to 4.5%. (Mr. Schultz's testimony indicates that PEF is asking for a 4.7% increase in base pay, TR 1929, while Mr. Toomey testified that he believes that the value is more like 3.5%. TR 1834.) In today's economy, with Floridians' personal income shrinking, Florida's above-average unemployment, and Florida's highest-in-the-nation foreclosure rate, most people feel lucky to even have a job, let alone to be getting a raise. Progress is asking for "business as usual" pay raises even in the face of Florida's depressed economy and even knowing that many of its customers have to choose between paying PEF's bills and buying food or medicine. See generally, the transcripts of the customer service hearings held in this case. See, e.g., Inverness Customer Service Hearing TR 28-29, 62, 80, 85, 101, 116, 129, 131, 147; St. Petersburg Customer Service Hearing TR 79, 84-85, 134; Clearwater Customer Service Hearing TR 69-70, 74, 85, 116-17.

In this economy, which clearly does not reflect business as usual, it is difficult to see how business as usual pay raises can be necessary for Progress to provide safe, adequate, reliable service at the lowest possible cost. The Citizens' witness Schultz recommends a reduction in PEF's pay increases of approximately $12.2 million per year. TR 1929. Mr. Schultz also analyzed Progress's proposed and unfilled positions and recommends that the Company's labor costs be reduced to reflect the removal of 80 positions, for a reduction of $4.2 million. TR 1932. This adjustment simply assumes that Progress's recent history of unfilled positions will continue. There is no reason to believe that Progress would be successful at keeping all positions filled; if they could do so, and if PEF needed to do so in order to provide safe, adequate, reliable service, the Commission must presume that it would have done so.

If the Commission were to grant the requested wages, salaries, and benefits amounts for setting Progress's rates, and if Progress were then to continue to experience average vacancy rates, Progress's customers would be paying for services that were not being provided. This is obviously paying more than the lowest possible cost for safe, adequate, reliable service, and the Commission should accordingly reject Progress's request and adopt the recommendations of OPC's witness Helmuth Schultz.

Additionally, if the Commission were to grant Progress's requested wages, salaries, and benefits amounts for setting Progress's rates, there would be no prohibition against Progress later – or sooner – cutting pay, DesChamps, TR 3348, or reducing its work force, either of which would then result in additional funds flowing to Progress's bottom line earnings and Progress's customers paying more than necessary for Progress to provide safe, adequate, reliable service.

The Commission should note well that such a course of action by a Florida investor-owned utility is not unprecedented: following the Commission's decision to grant Tampa Electric Company a rate increase in Docket No. 080317-EI, based on a certain number of positions, Tampa Electric subsequently "had some staffing changes," though Mr. DesChamps didn't know whether those changes were with regard to "layoffs or other retirements or what." TR 3349-50.

Witness Schultz also recommends disallowance of employee fringe benefits. TR 1941-43. The total recommended jurisdictional reduction in PEF's rate hike request for labor costs, including incentive pay, is $47.5 million per year. EXH 170, Schedule C-3.

These recommended reductions in PEF's allowed labor costs are further bolstered by the fact that Mr. DesChamps was not aware of any specific productivity gain metrics used in setting overall wage and salary levels, TR 3342, and by the fact that he was not aware of any "belt-tightening measures with regard to salary, wages, and employee compensation." TR 3342. PEF's duty is to provide safe, adequate, reliable service to the public at the lowest possible cost. However, PEF's labor cost witness couldn't identify any belt-tightening measures taken by the Company with respect to its labor costs, even in the current depressed state of Florida's economy; this is not consistent with PEF's duty. In the public interest, as stated by customers at the service hearings, PEF should be tightening its belt just as many of its customers are having to do.

C. Operating & Maintenance Expense - Storm Reserve Accrual (Issue 68)

Progress has proposed an increase in its storm reserve accrual from $6 million per year to $14.9 million per year (jurisdictional). TR 1917; EXH 170, Schedule C-2. Not only is PEF's proposed increase unjustified and unnecessary, even allowing PEF to continue charging the current amount of $6 million per year in base rates is unjustified and unnecessary to enable PEF to provide safe, adequate, reliable service at the lowest possible cost. This is because Progress's storm reserve is already at the Company's own proposed target level, and because if Progress were to experience either long-term average storm damages and costs, or recent short-term average storm damages and costs, over the next 5 years, it would still have a very healthy storm reserve balance as of January 1, 2015. In the event of an extreme or extraordinary storm event, Progress and the Commission both know, and have direct experience in developing and applying, special Storm Charges to provide Progress with prompt, adequate recovery of its reasonable and prudent storm restoration costs. Harris, TR 1076-77; Order No. PSC-05-0748-FOF-EI. Moreover, since it was primarily PEF's customers during 2006 and 2007 who paid to create the existing high balance in the reserve, it would be patently unfair to those customers who paid in the existing reserve balance, most of whom are still served by Progress today, to make them pay even more in the near term.

Progress's proposed target level for its storm reserve is $152.5 million. Schultz, TR 1917; Harris, TR 1012. Progress also credits the reserve with interest at the rate of 3.45 percent per year on the balance. Absent an unusual storm event between now and the end of calendar year 2009, the balance of the reserve going into 2010 will be approximately $153 million. Toomey, TR 1836-37. Thus, PEF's storm reserve is already at the Company's own proposed target level, and no further accruals are necessary. Requiring customers to pay more <u>now</u>, especially given the depressed Florida economy, is inconsistent with Progress's and the Commission's duties to ensure that PEF provides safe, adequate, reliable service at the lowest possible cost; PEF clearly doesn't <u>need</u> any accrual at all to reach its target level, so allowing any such amount in setting base rates would cause customers rates to be higher than they need to be.

Progress's long-term storm costs, including the damages and costs incurred in the 2004 and 2005 storm seasons, have averaged about $16 million per year. EXH 85, page 5-3. PEF's witness Steven Harris believes that the long-term average costs should be used in the analysis, notwithstanding the unprecedented experience in 2004 and 2005, and this section of the analysis proceeds accordingly. If PEF were to experience average storm costs over the next 5 years, with average costs of $16 million in each year, the reserve balance would be approximately $92 million. (Mathematical calculation, starting with the current beginning balance of $153 million, then subtracting $16 million in estimated storm costs each year before adding in interest at 3.45% on the remaining balance to get the next year's starting balance; result is $92.6 million). Even allowing for the uneven occurrence of storms, or the "lumpy" character of storms and associated costs, the balance at the end of 5 years would be between $86 million, if the Company experienced $80 million in costs in 2010, and $96 million, if all $80 million in costs were incurred in 2014. See Harris TR 1069-71. This analysis indicates that no storm accrual is necessary or justified for inclusion in PEF's base rates to be set in this case.

Analysis using more recent PEF storm damage and cost information, from 2006 through 2008, indicates that the balance would be substantially greater at the end of 5 years than using the long-term average value. Progress's storm costs, chargeable to its storm reserve, since the 2004 and 2005 seasons have averaged approximately $6.6 million per year. EXH 170, Schedule B-4. Replicating the above analyses using the lesser annual damage/cost value, based on recent experience, indicates that the balance at the end of 2014, heading into 2015, would be between $142 million and $147 million, in other words virtually unchanged from today's $153 million.

Again, this analysis indicates that no storm accrual is necessary or justified for inclusion in PEF's base rates to be set in this case, because under any average-cost scenario, PEF will have more than enough available in its storm reserve to cover restoration costs, and if there were an extraordinary event, PEF could avail itself of a Storm Charge as it has in the past. See Order No. PSC-05-0748-FOF-EI (Docket No. 041272-EI, July 14, 2005), in which the Commission approved a Storm Charge for Progress to enable it both to recover its reasonable and prudent storm restoration costs incurred in the unprecedented 2004 and 2005 storm seasons, and to replenish its storm reserve. See Harris, TR 1076-78. In fact, going into 2006, PEF's storm reserve balance was $5.5 million, EXH 170, and PEF's customers paid in another $121 million in 2007 and 2008 through the Storm Charge. (Additional accruals booked from PEF's base revenues, and interest on the balance, bring the current balance to its $153 million level.)

Additionally, although PEF apparently thought it important to calculate the probability of the reserve going negative with a $6 million a year accrual vs. a $16 million a year accrual, EXH 85, page 5-2, inexplicably, the Company never even asked Mr. Harris to perform the comparable probability calculation if the accrual were set to zero as recommended by Mr. Schultz. Harris, TR 1075. The probability of the reserve going negative only improves from 14 percent to 10 percent with the $10 million/year increment proposed by the Company. EXH 85, at page 5-2. It appears a reasonable inference that the probability would not improve much more from a smaller change, i.e., from $6 million a year to $0, as recommended by witness Schultz.

Progress's attempts to suggest that "rate stability" would be enhanced by its proposed higher accrual is misleading at best; moreover, it is not supported by any competent, substantial evidence. In the first instance, what PEF seeks is higher rates now, consistent with its other overreaching attempts to get more cash, in return for what it suggests would be avoided need for a storm restoration surcharge later – its hypothetical rate instability. All consumer parties in this case support no accrual, indicating that they view lower rates now as preferable; in other words, today's consumers would prefer more stability now to a hypothetical risk of a storm surcharge later. On this point, see also, Commission Order No. PSC-06-0464-FOF-EI, In Re: Petition for Issuance of a Storm Recovery Financing Order, by Florida Power & Light Company, at 25, where the Commission approved a fixed storm reserve to be funded by storm restoration charges, in recognition of the fact that FPL's customers completely bear the risk of too-high or too-low storm reserves. When asked, PEF's witness agreed that he does not present any testimony relative to this issue, and further that he does not dispute the Commission's findings in the FPL order. Harris, TR 1081-82. Moreover, the only PEF witness who testified about rate stability relative to the storm reserve accrual was Steven Harris, who expressly acknowledged that was not advocating rate stability for storm restoration costs as the appropriate policy. Harris, TR 1078. Thus, there is no competent substantial evidence to support PEF's spurious claim regarding rate stability relative to storm costs and charges.

Since PEF's customers in 2006 and 2007 paid in the majority – more than $121 million – of the balance in the storm reserve, EXH 170, Schedule B-4 (Schultz), it is far more fair to those customers who paid it to relieve them of the obligation to pay in even more now, especially since PEF doesn't need it now and won't need it unless there is an unusually extreme storm event. And in the case of an extraordinary storm event and extraordinary damages and restoration costs, PEF has access to the Commission for a Storm Charge. See TR 4001, where PEF's witness Vilbert agreed that there would be a closer match of customers in the first year following a given period than further out in the future.

D. Operating & Maintenance Expense - O&M Other

Competent substantial evidence indicates that PEF has overstated numerous other O&M expense categories for its 2010 rate hike request. Besides the storm reserve accrual and labor-related costs discussed above, Mr. Schultz analyzed and recommended adjustments to the following O&M expense categories: rate case expense, transmission O&M expense, distribution O&M expense, power operations O&M expense, directors and officers liability insurance, injuries and damages expense, and an O&M expense productivity adjustment. Schultz, TR 1943-68.

Mr. Schultz recommends reducing PEF's claimed rate case expense by $989,618, and working capital by $969,531, TR 1943, based on the fact that consultant and legal costs exceed contract amounts and on a more reasonable amortization period of 5 years. TR 1043-44.

Mr. Schultz recommends reducing PEF's requested transmission O&M expense by approximately $2 million, TR 1946, based on his analysis that PEF's costs increased more than is reasonable from 2008 to the 2010 test year and assuming continued transmission vegetation management expenses at the Company's 2006-2009 levels. TR 1946; EXH 170, Schedules C-2 & C-6.

Mr. Schultz also analyzed distribution O&M expenses and recommends disallowances of approximately $8.5 million on the basis that PEF's claimed distribution expenses are overstated and that the sharp increases from 2008 to 2010 are unexplained. TR 1947, EXH 170, Schedules C-2 & C-7.

Mr. Schultz also analyzed power plant O&M expenses and recommends a reduction in PEF's allowed revenue requirements of approximately $17.7 million. TR 1949-52, EXH 170, Schedule C-8. These recommended disallowances are based largely on the fact that they are dramatic unexplained increases from 2008 to 2010, and from 2009 budgeted amounts to the Company's 2010 request. TR 1949-51.

Other O&M reductions recommended by Mr. Schultz include disallowance of directors and officers liability insurance, reduction in injuries and damages allowance, reduction in administrative and general costs, and a productivity adjustment. Together, these adjustments would reduce PEF's rate increase request by approximately $29 million. TR 1952-59; EXH 170, Schedules C-2, C-9, C10, and C-11

At best, PEF's tremendous growth in all sectors of its O&M costs is a remarkable, and improbable, coincidence. This is especially true in light of the fact that Progress, in a presentation to financial analysts in February 2009, stated that it was targeting minimal O&M growth. EXH 294, pages 6, 13. In stark contrast to its message to the analysts, PEF's rate case request includes tremendous O&M jumps in 2010. While PEF offers explanations for these dramatic increases, these do not explain the stark differences between the Company's request filed on March 20, 2009, and its message to analysts 3 weeks earlier. In fact, this patent inconsistency of claims to the Commission compared to claims to analysts strains credulity. Of course, one unifying explanation is that PEF hopes to get a very high rate increase, based on its claimed, dramatically increased O&M costs, and then to work toward "minimal O&M growth," EXH 293 at 6, which would, of course, bolster PEF's earnings.

In fulfilling its duty to set PEF's rates at levels sufficient to provide safe, adequate, reliable service, the Commission should reduce PEF's O&M costs for ratemaking purposes as recommended by witness Schultz.

CONCLUSION: FAIR, JUST & REASONABLE RATES

Ultimately, the Commission is required by its organic regulatory statutes to set rates for Progress Energy Florida that are fair, just, and reasonable. Progress acknowledges that its duty, as a public utility, is to provide safe, adequate, reliable service at the lowest possible cost. Thus, implementing its statutory mandate to regulate in the public interest and to set rates that are fair, just, and reasonable for consumers and for the utility, and following the accepted regulatory principles articulated in the Hope and Bluefield cases, the Commission must set PEF's rates at levels that are sufficient for PEF to provide safe, adequate reliable service at the lowest possible cost, provided that those rates are also sufficient to enable Progress to cover its debt service, maintain its credit, and attract capital.

In any context, but especially in this case where Progress has not had its revenue requirements fully determined by the Commission since 1992, this rate case is effectively an "ultimate true-up" for all base rate issues. The following discussion summarizes the FRF's positions on the ultimate issue – the fairness, justice, and reasonableness of Progress's rates, and the adequacy of those rates for Progress – particularly in light of Issues 115A and 115B:

ISSUE 115A: Are the rates proposed by Progress Energy Florida fair, just, and reasonable, and compensatory as those terms are used in Chapter 366, Florida Statutes, including specifically Section 366.03, 366.041(1), 366.05(1), and 366.06(1), Florida Statutes?

ISSUE 115B: In fulfilling its mandate under Section 366.01, Florida Statutes, to regulate public utilities in the public interest and for the protection of the public welfare, and its mandate under Section 366.041(1) to fix fair, just, reasonable, and compensatory rates that consider among other things the value of such service to the public and that do not deny the utility a reasonable return upon its rate base, should the Commission grant any part of PEF's proposal to increase its base rate in this docket?

In summary, Progress's proposed rates are not fair, just, or reasonable, in that they would result in PEF recovering far more than is necessary for it to provide safe, adequate, reliable service at the lowest possible cost, and far more than necessary for PEF to have an opportunity, with prudent management, to earn a reasonable rate of return and to attract capital.

PEF's depreciation proposals would result in unjustifiably higher rates and most likely in an even greater depreciation reserve surplus in the future, at the expense of current customers.

Progress's dramatically sharp increases in many of its O&M expense items, while possibly due to some remarkable cosmic coincidence, bear the hallmarks of Progress's (and FPC's) history of overstated rate hike requests that the Commission has regularly rejected. These requests strain credulity, and the Commission should reject them as recommended by the Consumer Intervenors' witnesses.

Ultimately, the Commission must recognize the reasonableness of the Citizens' proposed 9.75% ROE value because Progress's own testimony And then, having recognized the reasonableness of the Citizens' proposed 9.75% ROE, the Commission must use that to set Progress's rates in this case unless it finds that the resulting total revenue requirement is not sufficient to enable Progress to maintain its credit and attract capital. The FRF believes that this latter "financial integrity" issue is resolved in the Consumer Intervenors' favor by Progress's own testimony that Progress was in fact able to provide safe, adequate, reliable service in 2007 and in 2008, and also to raise capital during those years, while it was earning ROEs of 9.70% and 9.71%, respectively.

The Commission must also recognize that PEF's suggestion that it might not be able to build its Levy Nuclear Project is a "red herring" in relation to PEF's requested ROE. This is because the Nuclear Cost Recovery statute, Section 366.93, Florida Statutes, explicitly provides that Progress will earn an AFUDC rate on its nuclear investment (even if the project is ultimately abandoned) that includes both the Company's capital structure that was recognized in the 2005 Progress Settlement and an 11.75% ROE, because those were the values that were embodied in

Progress's AFUDC rate that was in effect at the time the statute was enacted.[9]

[9] Section 366.93(2)(b), Florida Statutes, provides in pertinent part, "To encourage investment and provide certainty, for nuclear or integrated gasification combined cycle power plant need petitions submitted on or before December 31, 2010, associated carrying costs shall be equal to the pretax AFUDC in effect upon this act becoming law."

THE FLORIDA RETAIL FEDERATION'S POSTHEARING STATEMENT OF ISSUES AND POSITIONS

ISSUE 1: DROPPED (REPLACED BY ISSUES 115A & 115B)

TEST PERIOD AND FORECASTING

ISSUE 2: CATEGORY 1 STIPULATION - See Section X, Proposed Stipulations

ISSUE 3: What are the appropriate inflation, customer growth, and other trend factors for use in forecasting?

FRF Position: *No position.*

ISSUE 4: Are PEF's forecasts of customer growth, KWH by revenue class, and system KW for the projected test year appropriate?

FRF Position: * No. With respect to any issue that is impacted by the May 2009 revised forecast attached to Witness Slusser's rebuttal testimony, the FRF objects to its consideration in this docket.*

ISSUE 5: Are PEF's forecasts of billing determinants by rate class for the projected test year appropriate?

FRF Position: * No. With respect to any issue that is impacted by the May 2009 revised forecast attached to Witness Slusser's rebuttal testimony, the FRF objects to its consideration in this docket.*

QUALITY OF SERVICE

ISSUE 6: Is the quality and reliability of electric service provided by PEF adequate?

FRF Position: *Based on the available evidence, while PEF's customers raised serious concerns about PEF's service quality, objective measures indicate that the quality and reliability of service provided by PEF is adequate.*

Discussion

Numerous PEF customers testified about concerns with their service quality. More significantly, although PEF refers to J.D. Power's ratings of its customer satisfaction, the recent J.D. Power report, EXH 265, indicates that residential customers rank their satisfaction with PEF below average for its segment of South Region – Large Utilities. Of some concern is the fact that PEF, with a score of 619, ranks substantially below its sister company, Progress Energy Carolinas, which had a score of 657. Mr. Dolan testified that this low ranking may be attributable to customers' dissatisfaction with PEF's rates, rather than quality of service, TR 261, but this doesn't change the fact of the low ranking.

DEPRECIATION STUDY

ISSUE 7: **CATEGORY 1 STIPULATION**

ISSUE 8: What are the appropriate capital recovery schedules?

FRF Position: * The appropriate capital recovery schedules are those recommended by witness Jacob Pous on behalf of the Citizens of the State of Florida.*

ISSUE 9: Is PEF's calculation of the average remaining life appropriate?

FRF Position: * Yes, but only to the extent that the methodology and arithmetic appear to be correct. The FRF does not agree with the assumptions and inputs used in the calculation.*

ISSUE 10: What life spans should be used for PEF's coal plants?

FRF Position: * Agree with OPC that the appropriate depreciation life span for PEF's coal units is 60 years.*

ISSUE 11: What life spans should be used for PEF's combined cycle plants?

FRF Position: * The appropriate depreciation life span for PEF's combined cycle units is 40 years. The other appropriate depreciation parameters are those recommended by witness Jacob Pous on behalf of the Citizens of the State of Florida.*

ISSUE 12: What are the appropriate depreciation parameters (remaining life, net salvage percent, and reserve percent), amortizations, and resulting rates for each production unit, including but not limited to coal, steam, combined cycle, etc.?

FRF Position: * The appropriate depreciation parameters for PEF's generating plants are those recommended by witness Jacob Pous, except that the proper life span for combined cycle units is 40 years.*

ISSUE 13: What are the appropriate depreciation parameters (remaining life, net salvage percent, and reserve percent), amortizations, and resulting rates for each transmission, distribution, and general plant account?

FRF Position: * The appropriate depreciation parameters are those recommended by witness Jacob Pous on behalf of the Citizens of the State of Florida.*

ISSUE 14: Based on the application of the depreciation parameters that the Commission has deemed appropriate to PEF's data, and a comparison of the calculated theoretical reserves to the book reserves, what are the resulting differences?

FRF Position: * Based on Witness Jacob Pous's testimony and exhibits, PEF has a depreciation reserve excess of $858 million.*

ISSUE 15: What, if any, corrective reserve measures should be taken with respect to the differences identified in the Issue 14?

FRF Position: * PEF's huge depreciation reserve indicates that current and recent-period customers have overpaid drastically relative to the true depreciation costs incurred by PEF, resulting in a gross inequity being imposed on those customers. The Commission should remedy this gross inequity by amortizing 75% of the surplus, or $646 million, over 4 years; limiting the amount of the surplus to be amortized will maintain PEF's financial integrity, taking account of all of the Citizens' witnesses' testimony, after reducing Progress's retail rates by $35 million per year.*

ISSUE 16: **CATEGORY 1 STIPULATION** - See Section X, Proposed Stipulations

FOSSIL DISMANTLEMENT COST STUDY

ISSUE 17: Should the current-approved annual dismantlement provision be revised?

FRF Position: *No.*

ISSUE 18: What, if any, corrective reserve measures should be approved for fossil dismantlement?

FRF Position: *No position.*

ISSUE 19: What is the appropriate annual provision for dismantlement?

FRF Position: * Agree with OPC that if fossil dismantlement is addressed in this proceeding, PEF's costs should be reduced by 60%.*

ISSUE 20: Are PEF's assumptions in the fossil dismantlement study with regard to site restoration reasonable?

FRF Position: *No.*

ISSUE 21: **DROPPED**

NUCLEAR DECOMMISSIONING COST STUDY

ISSUE 22: Should the currently approved annual nuclear decommissioning accruals be revised?

FRF Position: *No.*

ISSUE 23: What is the appropriate annual decommissioning accrual in equal dollar amounts necessary to recover future decommissioning costs over the remaining life Crystal River Unit 3 (CR3)?

FRF Position: * Agree with OPC that the Commission should not change PEF's nuclear decommissioning accrual.*

RATE BASE

ISSUE 24: Has the company removed all non-utility activities from rate base?

FRF Position: *No.*

ISSUE 25: Should any adjustments be made to rate base related to the Bartow Repowering Project?

FRF Position: * Agree with OPC.*

ISSUE 26: Should an adjustment be made to reflect any test year or post test year revenue requirement impacts of "The American Recovery and Reinvestment Act" signed into law by the President on February 17, 2009?

FRF Position: *No position.*

ISSUE 27: Is PEF's requested level of Plant in Service for the projected 2010 test year appropriate?

FRF Position: *No.*

ISSUE 28: What adjustments, if any, should be made to accumulated depreciation to reflect revised depreciation rates, capital recovery schedules, and amortization schedules resulting from PEF's depreciation study?

FRF Position: * Agree with OPC that accumulated depreciation should be reduced by $112,883,411.*

ISSUE 29: Is PEF's requested level of Accumulated Depreciation and Amortization in the amount of $4,437,117,000 for the 2010 projected test year appropriate?

FRF Position: *No.*

ISSUE 30: Is PEF's requested level of CWIP – No AFUDC in the amount of $151,145,000 for the projected 2010 test year appropriate?

FRF Position: * Agree with OPC.*

ISSUE 31: Is PEF's requested level of Plant Held for Future Use in the amount of $25,723,000 for the projected 2010 test year appropriate?

FRF Position: *No.*

ISSUE 32: Is PEF's requested level of Nuclear Fuel – No AFUDC (net) in the amount of $126,566,000 for the projected 2010 test year appropriate?

FRF Position: * No. PEF has failed to justify its nuclear fuel balance for the test year, and accordingly, its nuclear fuel balance should be reduced by $26,752,411.*

ISSUE 33: Should an adjustment be made to PEF's requested storm damage reserve, annual accrual of $14.9 million, and target level of $150 million?

FRF Position: * Yes. The Commission should order PEF to reduce its storm accrual to zero, because the current reserve balance is sufficient to cover the costs of non-catastrophic storms and because the company has available other means of addressing cost recovery in the event of catastrophic storms.*

ISSUE 34: **CATEGORY 2 STIPULATION** - See Section X, Proposed Stipulations

ISSUE 35: Should unamortized rate case expense be included in Working Capital?

FRF Position: *No.*

ISSUE 36: Has PEF appropriately reflected the impact of SFAS 143 (Asset Retirement Obligations) in its proposed working capital calculation?

FRF Position: *No.*

ISSUE 37: Is PEF's requested level of Working Capital Allowance in the amount of ($9,041,000) for the projected test year appropriate?

FRF Position: *No.*

ISSUE 38: Is PEF's requested level of Rate Base in the amount of $6,238,617,000 for the 2010 projected test year appropriate?

FRF Position: • No. Consistent with the recommendations of the Citizens' witnesses, PEF's rate base should be $6,348,626,000.*

COST OF CAPITAL

ISSUE 39: What is the appropriate amount of accumulated deferred taxes to include in the capital structure for the projected test year?

FRF Position: *$329,399,000.*

ISSUE 40: What is the appropriate amount and cost rate of the unamortized investment tax credits to include in the capital structure for the projected test year?

FRF Position: *$4,991,000; appropriate cost rate of 7.84%.*

ISSUE 41: Should PEF's requested pro forma adjustment to equity to offset off-balance sheet purchased power obligations be approved?

FRF Position: *No.*

ISSUE 42: What is the appropriate equity ratio that should be used for PEF for purposes of setting rates in this proceeding?

FRF Position: *50%.*

ISSUE 43: Have rate base and capital structure been reconciled appropriately?

FRF Position: *No position.*

ISSUE 44: What is the appropriate capital structure for the projected test year?

FRF Position: * The appropriate capital structure for PEF in this case is that recommended by Dr. J. Randall Woolridge, witness for the Citizens of the State of Florida.*

ISSUE 45: What is the appropriate cost rate for short-term debt for the projected test year?

FRF Position: *3.06%.*

ISSUE 46: What is the appropriate cost rate for long-term debt for the projected test year?

FRF Position: *6.05%.*

ISSUE 47: What is the appropriate return on equity (ROE) for the projected test year?

FRF Position: *9.75%.*

ISSUE 48: What is the appropriate weighted average cost of capital including the proper components, amounts, and cost rates associated with the projected capital structure?

FRF Position: *7.33%.*

NET OPERATING INCOME

ISSUE 49: Is PEF's projected level of total operating revenues in the amount of $1,517,918,000 for the 2010 projected test year appropriate?

FRF Position: *No.*

ISSUE 50: What are the appropriate adjustments to reflect the base rate increase for the Bartow Repowering Project authorized in Order No. PSC-09-0415-PAA-EI?

FRF Position: * Agree with OPC.*

ISSUE 51: **CATEGORY 2 STIPULATION** - See Section X, Proposed Stipulations

ISSUE 52: **CATEGORY 2 STIPULATION** - See Section X, Proposed Stipulations

ISSUE 53: **CATEGORY 2 STIPULATION** - See Section X, Proposed Stipulations

ISSUE 54: **CATEGORY 2 STIPULATION** - See Section X, Proposed Stipulations

ISSUE 55: **DROPPED**

ISSUE 56: Has PEF made the appropriate adjustments to remove Aviation cost for the test year?

FRF Position: *No position.*

ISSUE 57: Should an adjustment be made to advertising expenses?

FRF Position: *No position.*

ISSUE 58: **DROPPED**

ISSUE 59: Is PEF's proposed allowance of $2,412,100 for directors and officers liability insurance appropriate?

FRF Position: *No.*

ISSUE 60: Is PEF's proposed allowance of $3,669,000 for 2010 injuries and damages expense appropriate?

FRF Position: *No.*

ISSUE 61: Is PEF's proposed allowance of $23,228,000 for 2010 A&G office supplies and expenses appropriate?

FRF Position: *No.*

ISSUE 62: Should an adjustment be made to PEF's proposed 2010 allowance for O&M expense to reflect productivity improvements, if any?

FRF Position: *Yes.*

ISSUE 63: Should an adjustment be made to PEF's requested level of salaries and employee benefits for the 2010 projected test year?

FRF Position: *Yes.*

ISSUE 64: Are PEF's proposed increases to average salaries for 2010 appropriate?

FRF Position: * No. Agree with OPC that PEF's proposed increase of 4.7% in base salaries is excessive in light of current labor market conditions and in light of the current bleak state of the economy.*

ISSUE 65: Are PEF's proposed increases in employee positions for 2010 appropriate?

FRF Position: *No.*

ISSUE 66: Should the proposed 2010 allowance for incentive compensation be adjusted?

FRF Position: * Yes. Agree with OPC that PEF's proposed incentive compensation amount of $25,371,639 and PEF's proposed $12,094,011 for long-term incentive compensation should be disallowed.*

ISSUE 67: Should the Company's proposed 2010 allowance for employee benefit expense be adjusted?

FRF Position: * Yes. Agree with OPC that PEF's employee benefit expense should be reduced by $9,376,809.*

ISSUE 68: Should an adjustment be made to the accrual for property damage for the 2010 projected test year?

FRF Position: * Yes. PEF's annual accrual for storm damage reserve should be eliminated because the current reserve balance is effectively at the Company's proposed target level, because the current balance is sufficient to cover the costs of non-catastrophic storms for at least the next 5 years, and because the company has adequate other means of addressing cost recovery in the event of catastrophic storms.*

ISSUE 69: Should an adjustment be made to PEF's 2010 generation O&M expense?

FRF Position: * Yes. PEF's Power Operations Expense should be reduced by $17,741,309.*

ISSUE 70: Should an adjustment be made to PEF's 2010 transmission O&M expense?

FRF Position: * Yes. PEF's Transmission expenses should be reduced by $2,055,188.*

ISSUE 71: Should an adjustment be made to PEF's 2010 distribution O&M expense?

FRF Position: *Yes.*

ISSUE 72: **DROPPED**

ISSUE 73: What is the appropriate amount and amortization period for PEF's rate case expense for the 2010 projected test year?

FRF Position: * Rate case expense should be reduced by $989,618.*

ISSUE 74: **CATEGORY 2 STIPULATION** - See Section X, Proposed Stipulations

ISSUE 75: What adjustments, if any, should be made to the 2010 projected test year depreciation expense to reflect revised depreciation rates, capital recovery schedules, and amortization schedules resulting from PEF's depreciation study?

FRF Position: * PEF's allowed depreciation expense should be reduced by $113,112,961.*

ISSUE 76: What is the appropriate amount of depreciation and fossil dismantlement expense for the 2010 projected test year?

FRF Position: * The appropriate depreciation expense for PEF for 2010 is $322,500,632. The FRF's position on fossil dismantlement is stated at Issue 19.*

ISSUE 77: **CATEGORY 1 STIPULATION** - See Section X, Proposed Stipulations

ISSUE 78: **CATEGORY 2 STIPULATION** - See Section X, Proposed Stipulations

ISSUE 79: **CATEGORY 2 STIPULATION** - See Section X, Proposed Stipulations

ISSUE 80: Should an adjustment be made to taxes other than income taxes for the 2010 projected test year?

FRF Position: *Agree with OPC.*

ISSUE 81: Is it appropriate to make a parent debt adjustment as per Rule 25-14.004, Florida Administrative Code?

FRF Position: *Yes.*

ISSUE 82: Should an adjustment be made to Income Tax expense for the 2010 projected test year?

FRF Position: * Agree with OPC that this would be a fallout of decisions on other issues.*

ISSUE 83: Is PEF's requested level of Operating Expenses in the amount of $1,249,372,000 for the 2010 projected test year appropriate?

FRF Position: *No.*

ISSUE 84: Is PEF's projected net operating income in the amount of $268,546,000 for the 2010 projected test year appropriate?

FRF Position: *No.*

ISSUE 85: Has PEF appropriately accounted for affiliated transactions? If not, what adjustment, if any, should be made?

FRF Position: *No.*

REVENUE REQUIREMENTS

ISSUE 86: **CATEGORY 2 STIPULATION** - See Section X, Proposed Stipulations

ISSUE 87: Is PEF's requested annual operating revenue increase of $499,997,000 for the 2010 projected test year appropriate?

FRF Position: * No. This increase is excessive and unnecessary to enable PEF to provide adequate and reliable service and also unnecessary to enable PEF to attract needed capital. Granting PEF's requested increase would result in rates that are unfair, unjust, unreasonable, and contrary to the public interest.*

COST OF SERVICE AND RATE DESIGN

ISSUE 88: Has PEF correctly calculated revenues at current rates for the projected test year?

FRF Position: * Consistent with its Statement of Basic Position above, the FRF has "No position" with respect to the revenue calculation for 2010 in PEF's original case filed in March 2009. However, the FRF objects – with respect to this issue and to any other issue impacted by PEF's revised sales forecast filed on August 31, 2009 – to consideration of the revised sales forecast.*

ISSUE 89: Is PEF's proposed separation of costs and revenues between the wholesale and retail jurisdictions appropriate?

FRF Position: *Consistent with its Statement of Basic Position above, the FRF has "No position" with respect to the jurisdictional separation cost study for 2010 in PEF's original case filed in March 2009. However, the FRF objects – with respect to this issue and to any other issue impacted by PEF's revised sales forecast filed on August 31, 2009 – to consideration of the revised sales forecast, to the consideration of the jurisdictional cost study based thereon, and to any other consideration of the revised forecast.*

ISSUE 90: What is the appropriate Cost of Service Methodology to be used to allocate base rate and cost recovery costs to the rate classes?

FRF Position: *No position.*

ISSUE 91: If the Commission approves a cost allocation methodology other than the 12 CP and 1/13th Average Demand, should all cost recovery factors be adjusted to reflect the new cost of service methodology?

FRF Position: *No position.*

ISSUE 92: How should any change in revenue requirements approved by the Commission be allocated among the customer classes?

FRF Position: * Any decrease (or increase) in PEF's authorized revenue requirements should be allocated to the customer classes on the basis of an equal percentage decrease (or increase) to all base rates.*

ISSUE 93: **CATEGORY 2 STIPULATION** - See Section X, Proposed Stipulations

ISSUE 94: **CATEGORY 2 STIPULATION** - See Section X, Proposed Stipulations

ISSUE 95: Should the Commission approve PEF's proposal to eliminate its IS-1, IST-1, CS-1, and CST-1 rate schedules and transfer the current customers to otherwise applicable rate schedules?

FRF Position: *No.*

ISSUE 96: Is PEF's proposal to grandfather certain terms and conditions for existing IS-1, IST-1, CS-1, and CST-1 customers transferred to the IS-2, IST-2, CS-2, and CST-2 rate schedules appropriate?

FRF Position: *No position.*

ISSUE 97: **CATEGORY 2 STIPULATION** - See Section X, Proposed Stipulations

ISSUE 98: Are PEF's proposed customer charges appropriate?

FRF Position: * No. PEF's proposed customer charges should be reduced to reflect the reduction in revenue requirements identified by the Citizens' witnesses.*

ISSUE 99: Are PEF's proposed service charges appropriate?

FRF Position: * No.*

ISSUE 100: Is PEF's proposed charge for Temporary Service appropriate?

FRF Position: * No. PEF's proposed charges should be reduced to reflect the reduction in revenue requirements identified by the Citizens' witnesses.*

ISSUE 101: Is PEF's proposed Premium Distribution Service charge appropriate?

FRF Position: * No. PEF's proposed charges should be reduced to reflect the reduction in revenue requirements identified by the Citizens' witnesses.*

ISSUE 102: **DROPPED**

ISSUE 103: **CATEGORY 1 STIPULATION** - See Section X, Proposed Stipulations

ISSUE 104: **CATEGORY 2 STIPULATION** - See Section X, Proposed Stipulations

ISSUE 105: **CATEGORY 2 STIPULATION** - See Section X, Proposed Stipulations

ISSUE 106: **CATEGORY 2 STIPULATION** - See Section X, Proposed Stipulations

ISSUE 107: What is the appropriate method of designing time of use rates for PEF?

FRF Position: *No position.*

ISSUE 108: What are the appropriate charges under the Firm, Interruptible, and Curtailable Standby Service rate schedules?

FRF Position: * The appropriate charges are those that reflect the reduction in revenue requirements identified by the Citizens' witnesses.*

ISSUE 109: What is the appropriate level of the interruptible credit?

FRF Position: *No position.*

ISSUE 110: Should the interruptible credit be load factor adjusted?

FRF Position: *No position.*

ISSUE 111: What are the appropriate energy charges?

FRF Position: *The appropriate energy charges are those that reflect the reduction in revenue requirements identified by the Citizens' witnesses.*

ISSUE 112: What are the appropriate demand charges?

FRF Position: * The appropriate demand charges are those that reflect the reduction in revenue requirements identified by the Citizens' witnesses.*

ISSUE 113: What are the appropriate lighting charges?

FRF Position: * The appropriate lighting charges are those that reflect the reduction in revenue requirements identified by the Citizens' witnesses.*

ISSUE 114: Should PEF's proposal to revise its Leave Service Active (LSA) provision (tariff sheet No. 6.110) be approved?

FRF Position: *No position.*

ISSUE 115: What is the appropriate effective date for PEF's revised rates and charges?

FRF Position: • The appropriate effective date for any changes in PEF's rates and charges as a result of this docket is for usage (consumption) on and after January 1, 2010, and for services rendered on and after January 1, 2010.*

ISSUE 115A: Are the rates proposed by Progress Energy Florida fair, just, and reasonable, and compensatory as those terms are used in Chapter 366, Florida Statutes, including specifically Section 366.03, 366.041(1), 366.05(1), and 366.06(1), Florida Statutes?

FRF Position: *No. Progress's proposed rates are based on unreasonably high costs and cost factors, such as ROE and equity ratio, and other assumptions, such as shorter than justified depreciation lives, all of which combine to make Progress's proposed rates unfair, unjust, unreasonable, and far greater than necessary to enable Progress to provide safe, adequate, reliable service at a reasonable cost and to earn a reasonable return and attract sufficient capital.*

ISSUE 115B: In fulfilling its mandate under Section 366.01, Florida Statutes, to regulate public utilities in the public interest and for the protection of the public welfare, and its mandate under Section 366.041(1) to fix fair, just, reasonable, and compensatory rates that consider among other things the value of such service to the public and that do not deny the utility a reasonable return upon its rate base, should the Commission grant any part of PEF's proposal to increase its base rate in this docket?

FRF Position: *No. The Commission should deny PEF's proposed base rate increase in its entirety. Progress's proposed rates are based on unreasonably high costs and cost factors, such as ROE and equity ratio, and other assumptions, such as shorter than justified depreciation lives, all of which combine to make Progress's proposed rates unfair, unjust, unreasonable, and far greater than necessary to enable Progress to provide safe, adequate, reliable service at a reasonable cost and to earn a reasonable return and attract sufficient capital.*

OTHER ISSUES

ISSUE 116: Should any of the $13,078,000 interim rate increase granted by Order No. PSC-09-0413-PCO-EI be refunded to the ratepayers?

FRF Position: * Yes. The increase was not lawfully granted and should be refunded to customers with interest.*

ISSUE 117: **CATEGORY 2 STIPULATION** - See Section X, Proposed Stipulations

ISSUE 118: **DROPPED**

ISSUE 119: Does the creation of a regulatory asset and the deferral of pension expenses from a period covered by the Stipulation approved by Order No. PSC-05-0945-S-EI to a future period violate the terms of the Stipulation and order?

FRF Position: *Yes.*

ISSUE 120: Does the creation of a regulatory asset and the deferral of pension expenses from a period covered by the Stipulation and order to a future period constitute retroactive ratemaking?

FRF Position: *Yes.*

ISSUE 121: Does the creation of a regulatory asset and the deferral of pension expenses from a period covered by the revenue sharing provisions of the Stipulation and order to a future period result in double recovery of those expenses?

FRF Position: *Yes.*

ISSUE 122: Should this docket be closed?

FRF Position: • Yes. After the Commission issues its order reducing Progress's rates as recommended by the Citizens' witnesses, and after that order has become final as a matter of law, this docket should be closed.*

Respectfully submitted this 16th day of October, 2009.

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by electronic delivery this 16th day of October, 2009, to the following:

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