

State of Florida



# Public Service Commission

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**DATE:** May 20, 2010  
**TO:** Office of Commission Clerk (Cole)  
**FROM:** Division of Economic Regulation (Slemkewicz, P. Lee, Maurey)  
Office of the General Counsel (Klancke, Fleming)  
**RE:** Docket No. 090079-EI – Petition for increase in rates by Progress Energy Florida, Inc.

Docket No. 090144-EI – Petition for limited proceeding to include Bartow repowering project in base rates, by Progress Energy Florida, Inc.

Docket No. 090145-EI – Petition for expedited approval of the deferral of pension expenses, authorization to charge storm hardening expenses to the storm damage reserve, and variance from or waiver of Rule 25-6.0143(1)(c), (d), and (f), F.A.C., by Progress Energy Florida, Inc.

Docket No. 100136-EI – Petition for approval of an accounting order to record a depreciation expense credit, by Progress Energy Florida, Inc.

**AGENDA:** 06/01/10 – Regular Agenda – Decision on Stipulation and Settlement – Interested Persons May Participate

**COMMISSIONERS ASSIGNED:** All Commissioners

**PREHEARING OFFICER:** Skop (090079-EI)  
Skop (090144-EI)  
Skop (090145-EI)  
Skop (100136-EI)

**CRITICAL DATES:** None

**SPECIAL INSTRUCTIONS:** None

**FILE NAME AND LOCATION:** S:\PSC\ECR\WP\090079.RCM.DOC

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### **Case Background**

On March 20, 2009, Progress Energy Florida, Inc. (PEF or Company) filed a petition for a permanent rate increase. PEF requested an increase in its retail rates and charges to generate \$499,997,000 in additional gross annual revenues. The Company based its request on a projected test year ending December 31, 2010. The Company is engaged in business as a public utility providing electric service as defined in Section 366.02, Florida Statutes (F.S.), and is subject to the jurisdiction of this Commission.

The Office of the Public Counsel (OPC),<sup>1</sup> the Office of the Attorney General (AG),<sup>2</sup> the Florida Industrial Power Users Group (FIPUG),<sup>3</sup> the Florida Retail Federation (FRF),<sup>4</sup> the Florida Association for Fairness in Rate Making (AFFIRM),<sup>5</sup> the Navy (NAVY),<sup>6</sup> and White Springs Agricultural Chemicals, Inc. d/b/a PCS Phosphate – White Springs (PCS)<sup>7</sup> intervened in this proceeding.

On March 20, 2009, PEF also filed a Petition for Limited Proceeding to Include the Bartow Repowering Project in Base Rates, in Docket No. 090144-EI. On June 12, 2009, the Commission issued Proposed Agency Action (PAA) Order No. PSC-09-0145-PAA-EI<sup>8</sup> approving PEF's petition for a limited proceeding and consolidating this matter with Docket No. 090079-EI (Bartow PAA Order). In addition, Order No. PSC-09-0586-PCO-EI,<sup>9</sup> issued August 31, 2009, consolidated Docket No. 090145-EI with Docket No. 090079-EI.

The Commission held an evidentiary hearing on PEF's proposed rate increase on September 21-25, 28-30, 2009, and October 1, 2009. Thereafter, on March 5, 2010, upon consideration of the evidentiary record, post-hearing briefs of the parties, and staff's recommendation, the Commission issued Order No. PSC-10-0131-FOF-EI (Final Order).

On March 18, 2010, PEF filed its Motion for Reconsideration of Order No. PSC-10-0131-FOF-EI to Correct Calculation Mistakes in the Commission's Depreciation Expense, Accumulated Depreciation Reserve, and Revenue Requirements (Motion for Reconsideration). PEF asserted that the Final Order contained nine separate mathematical mistakes in the calculation of PEF's depreciation expense and accumulated depreciation reserve, totaling approximately \$36 million in mistakes in PEF's revenue requirements, as calculated by this Commission. In its Motion for Reconsideration, PEF further requested that the Final Order be amended to correct the mathematical mistakes in the calculation of PEF's accumulated

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<sup>1</sup> Order No. PSC-09-0105-PCO-EI, issued February 23, 2009.

<sup>2</sup> Order No. PSC-09-0122-PCO-EI, issued March 2, 2009.

<sup>3</sup> Order No. PSC-09-0198-PCO-EI, issued April 1, 2009.

<sup>4</sup> Order No. PSC-09-0199-PCO-EI, issued April 1, 2009.

<sup>5</sup> Order No. PSC-09-0579-PCO-EI, issued August 27, 2009.

<sup>6</sup> Order No. PSC-09-0399-PCO-EI, issued June 6, 2009.

<sup>7</sup> Order No. PSC-09-0200-PCO-EI, issued April 1, 2009.

<sup>8</sup> Order No. PSC-09-0415-PAA-EI, issued June 12, 2009, in Docket No. 090144-EI, In re: Petition for limited proceeding to include Bartow repowering project in base rates, by Progress Energy Florida, Inc.

<sup>9</sup> Order No. PSC-09-0586-PCO-EI, issued August 31, 2009, in Docket No. 090145-EI, In re: Petition for expedited approval of the deferral of pension expenses, authorization to charge storm hardening expenses to the storm damage reserve, and variance from or waiver of Rule 25-6.0143(1)(c), (d), and (f), F.A.C., by Progress Energy Florida, Inc.

depreciation expense, accumulated depreciation reserve, and revenue requirements. PEF has not requested oral argument on its own Motion for Reconsideration; however, PEF has asserted that it is willing to participate in oral argument if the Commission finds oral argument helpful to walk through the calculation mistakes identified in the Motion for Reconsideration.

On March 25, 2010, and March 29, 2010, FIPUG and PCS Phosphate filed their Responses to PEF's Motion for Reconsideration. Both FIPUG and PCS Phosphate asserted in their respective Responses that to the extent that any of the claimed \$36 million in errors is found to be accurate, that the appropriate response is for the Commission to use its broad rate-making authority to adjust the excess depreciation reserve as necessary and appropriate to ensure that there is no increase to PEF's customer base rates.

On March 29, 2010, OPC filed its Cross-Motion for Reconsideration and Response to PEF's Motion for Reconsideration (OPC's Cross-Motion). In OPC's Cross-Motion it asserted that the Commission erred, as a matter of law, in determining that the \$132 million increase in base rate revenues associated with the Bartow Repowering Project (Bartow) was approved prior to and outside of the final determination on January 11, 2010, on PEF's Petition for rate increase filed in this docket. As a result of that alleged error, OPC asserts that the Commission appears to have declined to amortize any more than \$23 million of the depreciation reserve surplus to offset the increased revenue requirement resulting from Bartow or any other undifferentiated component of PEF's overall jurisdictional revenue requirement.

On March 30, 2010, the AG's Office filed its Cross-Motion for Reconsideration and Response to PEF's Motion for Reconsideration, affirming and supporting the response and cross-motion filed by OPC. None of the Intervenors have requested oral argument with respect to the Motion for Reconsideration.

On April 5, 2010, PEF filed its Motion to Strike Citizen's Cross-Motion for Reconsideration and Response to Citizen's Cross-Motion for Reconsideration (Motion to Strike or PEF Response), arguing that OPC's Cross-Motion should be stricken on the grounds that it was untimely filed and, in the alternative, responding to OPC's Cross-Motion.

On March 18, 2010, PEF filed a petition for the approval of an accounting order to allow it to record a depreciation expense credit in Docket No. 100136-EI. This credit would reduce the cost of removal component in its depreciation expense resulting in a reduction of the theoretical reserve imbalance. PEF asserted that the proposed accounting treatment would provide it with the opportunity to earn a fair and reasonable return.

A Joint Motion for Approval of Stipulation and Settlement Agreement (Joint Motion) was filed on May 10, 2010 by PEF, OPC, AG, FIPUG, FRF, PCS, and the NAVY (Joint Movants). The proposed Stipulation and Settlement Agreement (Stipulation) is intended to resolve all of the issues in Docket Nos. 090079-EI, 090144-EI, 090145-EI, and 100136-EI.

This recommendation addresses the Joint Motion for Approval of Stipulation and Settlement Agreement. The Commission has jurisdiction pursuant to Sections 366.06 and 366.071, F.S.

### **Discussion of Issues**

**Issue 1:** Should the Commission approve the proposed Stipulation and Settlement Agreement?

**Recommendation:** Yes, the Commission should approve the proposed Stipulation and Settlement Agreement. (Slemkewicz, P. Lee, Maurey)

**Staff Analysis:** The Joint Movants have proffered the proposed Stipulation (Attachment 1) as a complete resolution of all matters pending in Docket Nos. 090079-EI, 090144-EI, 090145-EI, and 100136-EI. The major elements contained in the Stipulation are:

- Base rates frozen through the last billing cycle in December 2012 unless return on equity falls below 9.50 percent (Paragraphs 4 and 5)
- Discretion to record a depreciation expense credit of up to \$150 million in 2010, up to \$250 million in 2011, and up to any remaining balance of the depreciation theoretical reserve imbalance in 2012 (Paragraph 3)
- Discretion to accelerate the amortization of certain regulatory assets (Paragraph 7)
- Recovery of storm damage costs and storm damage reserve replenishment (not to exceed \$4.00/1,000 kWh monthly for residential customers) will begin, on an interim basis, 60 days following the filing of a petition (Paragraph 6)

The proposed Stipulation consists of 9 paragraphs of agreement among the Joint Movants. Staff believes that several of the paragraphs merit comment or clarification. These are as follows:

**Paragraph 3:** This paragraph provides PEF with the discretion to record a retail jurisdictional annual credit to depreciation expense and a debit to the “cost of removal portion” of the depreciation reserve of up to \$150 million in 2010, up to \$250 million in 2011, and up to the remaining balance of the cost of removal reserve in 2012. These credit amounts are in addition to the annual amortization of the depreciation reserve surplus approved in the Final Order. The Joint Motion states that the credits to depreciation expense will “reduce the existing depreciation theoretical reserve imbalance.”

For financial reporting purposes, PEF separates the book depreciation reserve between the portion attributable to plant life and that attributable to cost of removal. Also, the cost of removal component of the reserve is classified as a regulatory liability for financial reporting purposes. Under Paragraph 3, PEF will record the annual depreciation expense credit as a regulatory credit amortization with a debit to the cost of removal liability. This will have the effect of amortizing the remaining reserve surplus of \$667 million identified in the Final Order up to the amount of the cost of removal liability.

As of March 31, 2010, the portion of the depreciation reserve that PEF identifies as being attributable to cost of removal is \$587.1 million (\$535.2 million retail). This amount will decrease each year due to actual expenditures incurred in removing retired property and will increase due to additional depreciation expense based on the Commission-approved depreciation rates in the Final Order, which PEF estimates to be in the range of \$30 - \$35 million annually. If the full amount of the depreciation expense credit is taken in 2010 and 2011, PEF will have the discretion in 2012 of recording a credit to depreciation expense up to the amount of the cost of removal liability existing at that time.

Also pursuant to Paragraph 3, if PEF records a depreciation expense credit in a given year that is less than the cap set forth above, the Company is permitted to carry forward and record in subsequent years the difference between the booked amount of the expense credit and the set cap for that year. For example, if PEF records a credit to depreciation expense of \$100 million in 2010, it would be permitted to carry forward and record in 2011 or 2012 the \$50 million difference between the amount booked and the cap of \$150 million, in addition to the \$250 million capped amount for 2011.

Paragraph 5: Per the terms of this paragraph, if PEF's retail base rate earnings fall below 9.5 percent return on equity (ROE) as reported on a historical (12 month rolling period income statement) Commission adjusted or pro-forma basis on a PEF Earnings Surveillance Report (ESR) during the term of this Stipulation, PEF shall be entitled to seek interim, limited, or general base rate relief, or any combination thereof. For purposes of requesting relief under this paragraph, PEF must demonstrate that it recorded the greater of \$150 million or the actual depreciation expense credit on an adjusted or pro-forma basis. In addition, PEF may not include any acceleration of the amortization of the deferred regulatory assets identified in Paragraph 7 in the calculation of earnings for purposes of determining if achieved earnings are below 9.5 percent ROE.

Also pursuant to Paragraph 5, if PEF's retail base rate earnings exceed 11.5 percent ROE as reported on a historical Commission adjusted or pro-forma basis during the term of this Stipulation, any other Party shall be entitled to petition the Commission for a review of PEF's base rates. The ESR filed with the Commission consistent with Rule 25-6.1352, Florida Administrative Code, will be the basis for determining if PEF's ROE on a historical or pro-forma basis is above 11.5 percent. The depreciation expense credit and/or the acceleration of amortization of the regulatory assets identified in Paragraph 7 will be included as recognized in the calculation of the achieved ROE in the referenced ESR to which the 11.5 percent will be compared.

Paragraph 6: Per the terms of this paragraph, PEF is not precluded from requesting approval to recover costs (a) that are normally recovered through cost recovery clauses or surcharges, or (b) that are incremental costs not currently recovered in base rates that are determined to be clause recoverable, or (c) that are recoverable through base rates under the nuclear cost recovery legislation or the Commission's nuclear or integrated gasification combined cycle power plant cost recovery rule.

Paragraph 6 also explicitly addresses storm damage cost recovery. Sixty days following the filing of a petition seeking recovery of storm damage costs, the Joint Movants have agreed that PEF will be allowed to implement, on an interim basis, a monthly storm cost recovery surcharge of up to \$4.00/1,000 kWh on residential customer bills based on a 12-month recovery period. If the storm costs exceed that level, any additional costs will be recovered in a subsequent year(s) as determined by the Commission. This paragraph also allows PEF to use the surcharge to replenish its storm damage reserve to the level as of the implementation date of the Stipulation. As reflected in Order No. PSC-10-0131-FOF-EI, PEF is no longer authorized to make any accruals to the storm damage reserve. It is estimated that the storm damage reserve level as of the implementation date will be \$136 million. Based on the \$4.00/1,000kWh monthly cap for residential customers, the annual amount of the surcharge would be \$75.6 million for residential customers and a total of \$117.8 million for all of PEF's customers.

Paragraph 7: Pursuant to this paragraph, PEF will be authorized, at its discretion, to accelerate in whole or in part the amortization of the regulatory assets for FAS 109 Deferred Tax Benefits Previously Flowed Through, Unamortized Loss on Reacquired Debt, Interest on Income Tax Deficiency, and 2009 Pension Regulatory Asset over the term of the Stipulation. Table 1 – 1 below summarizes the amounts associated with each of these regulatory assets.

Table 1 – 1

Regulatory Asset	Date Created	Balance as of March 31, 2010	Annual Amortization
FAS 109 Regulatory Asset	1993	\$6.9 M	\$0.7 M
Unamortized Loss on Reacquired Debt	1998	\$19.3 M	\$1.4 M
Interest on Income Tax Deficiency	2009	\$3.1 M	\$1.4 M
Pension Regulatory Asset	2009	\$32.5 M	varies
Total		\$61.8 M	

As noted above in the discussion of Paragraph 5, PEF is precluded from recording an acceleration of the amortization of any of these regulatory assets in the calculation of earnings for purposes of determining eligibility for seeking interim, limited, or general base rate relief to be effective during the term of this Stipulation. PEF, at its sole discretion, will determine the amount, if any, of acceleration of amortization of these regulatory assets will be reflected in the calculation of earnings for purposes of determining if PEF's achieved ROE is in excess of 11.5 percent. Finally, any balance remaining after the acceleration of amortization of these regulatory assets will continue to be recoverable in rates in the future through amortization included in the cost of service.

Staff has reviewed the terms of the Stipulation. Staff believes that the Stipulation provides a reasonable resolution of the outstanding issues in Docket Nos. 090079-EI, 090144-EI, 090145-EI, and 100136-EI and is in the public interest. Therefore, staff recommends approval of the Stipulation.

Docket Nos. 090079-EI, 090144-EI, 090145-EI, 100136-EI

Date: May 20, 2010

**Issue 2:** Should Docket Nos. 090079-EI, 090144-EI, 090145-EI, and 100136-EI be closed?

**Recommendation:** Yes, Docket Nos. 090079-EI, 090144-EI, 090145-EI, and 100136-EI should be closed. (Klancke)

**Staff Analysis:** If staff's recommendation on Issue 1 is approved, the signatories to the Stipulation have asked that the order approving the Stipulation be issued as a final action. With the issuance of the Commission's final order, no further action by the Commission will be necessary. Therefore, absent a timely Notice of Appeal, these dockets should be closed.

**BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION**

In re: Petition for increase in rates by Progress Energy Florida, Inc.	Docket No. 090079-EI
In re: Petition for limited proceeding to include Bartow repowering project in base rates, by Progress Energy Florida, Inc.	Docket No. 090144-EI
In re: Petition for expedited approval of the deferral of pension expenses, authorization to charge storm hardening expenses to the storm damage reserve, and variance from or waiver of Rule 25-6.0143(1)(c), (d), and (f), F.A.C., by Progress Energy Florida, Inc.	Docket No. 090145-EI
In re: Petition of approval of an accounting order to record a depreciation expense credit by Progress Energy Florida, Inc.	Docket No. 100136-EI FILED: May 10, 2010

**STIPULATION AND SETTLEMENT AGREEMENT**

WHEREAS, pursuant to its March 20, 2009 filing, Progress Energy Florida, Inc. ("PEF" or the "Company"), petitioned the Florida Public Service Commission (the "Commission") for an increase in base rates and other related relief;

WHEREAS, the Commission issued Order No. PSC-10-0131-FOF-EI on March 18, 2010, of which PEF and the Office of Public Counsel ("OPC") have sought reconsideration, and which requests are pending before this Commission;

WHEREAS, the Company has filed with the Commission a petition for approval of an accounting order to record a depreciation expense credit, which remains pending before this Commission in Docket No. 100136-EI, and in which OPC and others have intervened;

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WHEREAS, the Company, OPC, the Attorney General of the State of Florida ("AG"), the Florida Industrial Power Users Group ("FIPUG"), the Florida Retail Federation ("FRF"), White Springs Agricultural Chemicals, Inc. ("White Springs"), and the U.S. Department of the Navy ("USDN") have agreed in principle to resolve all outstanding issues in Docket Nos. 090079-EI, 090144-EI, 090145-EI and 100136-EI pending before the Commission, as set forth in this Stipulation and Settlement Agreement (the "Agreement") dated May 10, 2010;

WHEREAS, unless the context clearly requires otherwise, the term Party or Parties means a signatory to this Agreement;

WHEREAS, the Parties recognize that this is an unprecedented time in the Florida economy, and that all Floridians, in particular those with fixed or low incomes, have been severely affected by the current economic recession;

WHEREAS, PEF and the Parties to this Agreement also recognize that this is a period of significant uncertainty regarding fuel prices and other energy, commodity, and operation and maintenance costs, driven in part by global factors and general economic uncertainty;

WHEREAS, this Agreement will help to mitigate the impact of high energy prices by, among other things, freezing PEF's current base rates through 2012;

WHEREAS, PEF believes that, but for this Agreement, the combination of lower energy sales and the rising cost of providing electric service would necessitate base rate increases implemented before or during 2012; and

WHEREAS, this Agreement will allow PEF's customers to avoid such potential rate increases.

NOW, THEREFORE, in consideration of the foregoing and the covenants contained herein, the Parties hereby agree and stipulate as follows:

1. This Agreement will become effective upon approval and final order of the Commission (the "Implementation Date") and continue through the last billing cycle in December 2012.

2. PEF will continue its base rates in effect as of the Implementation Date, without any change in such base rates except as otherwise provided for in this Agreement. Cost of service and rate design issues will be as set forth in Order No. PSC-10-0131-FOF-EI.

3. In consideration of the foregoing, PEF will have the discretion to reduce depreciation expense (cost of removal) by up to \$150 million in 2010, up to \$250 million in 2011, and up to any remaining balance in 2012 during the term of this Agreement until the earlier of (a) PEF's depreciation (cost of removal) reserve reaches zero, or (b) the term of this Agreement expires. In the event PEF reduces depreciation expense (cost of removal) by less than the caps set forth in this paragraph, PEF may carry forward (i.e. increase the cap by) any unused depreciation (cost of removal) reserve amounts in subsequent years during the term of this Agreement.

4. No Party to this Agreement will request, support, or seek to impose a change in the application of any provision hereof. Except as provided in paragraph 5, OPC, AG, FIPUG, FRF, White Springs, and USDN will neither seek nor support any reduction in PEF's base rates, including limited, interim or any other rate decreases, that would take effect prior to the first billing cycle for January 2013, except for any such reduction requested by PEF or as otherwise provided for in this Agreement. PEF shall not seek interim, limited, or general base rate relief during the term of this Agreement except as provided for in paragraph 5 of this Agreement. PEF is not precluded from seeking interim, limited or general base rate relief that would be effective during or after the first billing cycle in January 2013. Such interim relief may be based on time

periods before January 1, 2013, consistent with Section 366.071, F.S., and calculated without regard to the provisions of this Agreement.

5. If PEF's retail base rate earnings fall below a 9.5% return on equity as reported on a historical (12 month rolling period income statement) Commission adjusted or pro-forma basis on a PEF monthly earnings surveillance report during the term of the Agreement, PEF shall be entitled to seek general, limited, or interim base rate relief, or any combination thereof. Prior to requesting any such relief under this paragraph, PEF must have reflected on its referenced surveillance report reduced depreciation expense (cost of removal) by the greater of \$150 million or the actual cost of removal-generated depreciation expense credit on an adjusted or pro forma basis, and PEF may not seek any such relief to be effective during the term of this Agreement if its return on equity for such period (as defined in the first sentence of this paragraph) is equal to or greater than 9.5% after the specified reduction in depreciation expense has been included and reflected. Any calculation of interim rate increase relief pursuant to Section 366.071(5)(b)1, F.S., shall include a cost of removal-generated depreciation expense credit in the amount of the greater of \$150 million or the actual amount recorded. If PEF's retail base rate earnings exceed 11.5% return on equity as reported on a historical Commission adjusted or pro-forma basis on a PEF monthly earnings surveillance report during the term of the Agreement, any other Party shall be entitled to petition the Commission for a review of PEF's base rates. PEF will not include any acceleration of deferred assets identified in Paragraph 7 in the calculation of earnings for purposes of determining eligibility for seeking interim, limited or general base rate relief to be effective during the term of this Agreement or calculating interim relief entitlement under this paragraph to the extent that such accelerated expenses cause achieved earnings to be below 9.5% return on equity on an historical basis. The Parties to this Agreement are not precluded from

participating in any such proceedings. This Agreement shall terminate on the last day of the last billing cycle in December 2012 or the effective date of any Final Order issued in such proceeding that changes PEF's base rates under this paragraph. This paragraph shall not be construed to bar or limit PEF from any recovery of costs otherwise contemplated by this Agreement.

6. Nothing shall preclude the Company from requesting the Commission to approve the recovery of costs (a) that are of a type which traditionally and historically would be, have been, or are presently recovered through cost recovery clauses or surcharges, or (b) that are incremental costs not currently recovered in base rates which the Legislature or Commission determines are clause recoverable subsequent to the approval of this Agreement, or (c) which are recoverable through base rates under the nuclear cost recovery legislation, Section 366.93, F.S., or Commission Rule 25-6.0423, F.A.C. Specifically with respect to storm damage costs, nothing in this Agreement shall preclude PEF from petitioning the Commission to seek recovery of costs associated with any storms without the application of any form of earnings test or measure and irrespective of previous or current base rate earnings or level of theoretical depreciation reserve. Consistent with the rate design method set forth in Order Nos. PSC-06-0772-PAA-EI and PSC-05-0748-FOF-EI, the Parties agree that recovery of storm costs from customers will begin, on an interim basis, sixty days following the filing of a cost recovery petition and tariff with the Commission and will be based on a 12-month recovery period if the storm costs do not exceed \$4.00/1,000 kWh on monthly residential customer bills. In the event the storm costs exceed that level, any additional costs in excess of \$4.00/1,000 kWh shall be recovered in a subsequent year or years as determined by the Commission. All storm related costs shall be calculated and disposed of pursuant to Commission Rule 25-6.0143, F.A.C., and will be limited to costs

resulting from a tropical system named by the National Hurricane Center or its successor, estimate of incremental costs above the level of storm reserve prior to the storm and replenishment of the storm reserve to the level as of the Implementation Date of this Agreement. The Parties to this Agreement are not precluded from participating in any such proceedings. The Parties expressly agree that any proceeding to recover costs associated with any storm shall not be a vehicle for a "rate case" type inquiry concerning the expenses, investment, or financial results of operations of the Company and shall not apply any form of earnings test or measure or consider previous or current base rate earnings or level of theoretical depreciation reserve.

7. PEF will be authorized, at its discretion, to accelerate in whole or in part the amortization of the regulatory assets for FAS 109 Deferred Tax Benefits Previously Flowed Through, Unamortized Loss on Reacquired Debt, Interest on Income Tax Deficiency and 2009 Pension Regulatory Asset over the term of this Agreement. Any balance remaining after the acceleration of the amortization of these regulatory assets will continue to be recoverable in rates in the future through amortization to the cost of service.

8. The provisions of this Agreement are contingent on approval of this Agreement in its entirety by the Commission. The Parties further agree that they will support this Agreement and will not request or support any order, relief, outcome, or result in conflict with the terms of this Agreement in any administrative or judicial proceeding relating to, reviewing, or challenging the establishment, approval, adoption, or implementation of this Agreement or the subject matter hereof. No party will assert in any proceeding before the Commission that this Agreement or any of the terms in the Agreement shall have any precedential value. Approval of this Agreement in its entirety will resolve all matters in Docket Nos. 090144-EI, 090145-EI, 090079-EI, and 100136-EI pursuant to and in accordance with Section 120.57(4), Florida Statutes

(2009). Upon approval of this Settlement Agreement in its entirety by the Commission, PBF and OPC will withdraw their respective Motions for Reconsideration of Order No. PSC-10-0131-FOF-EI, and PEF will withdraw its Petition for Approval of an Accounting Order to Record a Depreciation Expense Credit in Docket No. 100136-EI. These Dockets will be closed effective on the date the Commission Order approving this Agreement is final and no Party shall seek appellate review of any order issued in these Dockets.

9. This Agreement dated as of May 10, 2010 may be executed in counterpart originals, and a facsimile of an original signature shall be deemed an original.

In Witness Whereof, the Parties evidence their acceptance and agreement with the provisions of this Agreement by their signatures below.

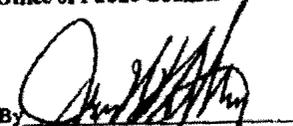
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Florida Power Corporation dba  
Progress Energy Florida, Inc.

By 

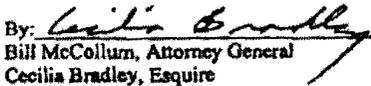
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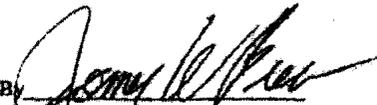
Attorney General, State of Florida

By   
Bill McCollum, Attorney General  
Cecilia Bradley, Esquire

Florida Industrial Power Users Group

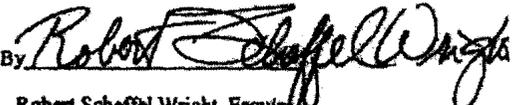
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White Springs Agricultural Chemicals,  
Inc.

By 

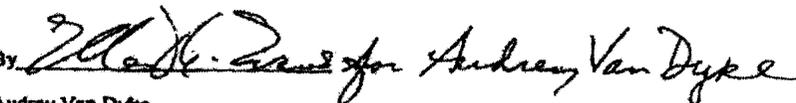
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