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**Subject:** Filing Docket 120009  
**Attachments:** PEF Motion for Deferral of CR3 Uprate.pdf



PEF

*for Deferral*

*Docket 120009*

*In re: Nuclear Cost Recovery Clause*

*Attached for filing*

- 1. Progress Energy Florida, Inc.'s Motion for Deferral of the Determination of the Reasonableness of 2012 and 2013 Projected Construction Expenditures and Associated Carrying Costs and the Approval of the Long-Term Feasibility for the Crystal River Unit 3 Uprate Project and Petition for a Temporary Variance or Waiver of Rule 25-6.0423(5)(c)(2, 5, F.A.C. on an Emergency Basis (with attached Exhibit A).*
- 2. Total pages of this document with attached Exhibit A is sixteen (16).*
- 3. This document is being filed on behalf of Progress Energy Florida, Inc.*
- 4. This document is being filed by*

*Jeanne Costello on behalf of Blaise N. Gamba CARLTON FIELDS*

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FPSC-COMMISSION CLERK

**BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION**

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In re: Nuclear Cost Recovery Clause

Docket No. 120009-EI  
Submitted for Filing: August 14, 2012

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**PROGRESS ENERGY FLORIDA, INC.'S MOTION FOR DEFERRAL OF THE DETERMINATION OF THE REASONABLENESS OF 2012 AND 2013 PROJECTED CONSTRUCTION EXPENDITURES AND ASSOCIATED CARRYING COSTS AND THE APPROVAL OF THE LONG-TERM FEASIBILITY FOR THE CRYSTAL RIVER UNIT 3 UPRATE PROJECT AND PETITION FOR A TEMPORARY VARIANCE OR WAIVER OF RULE 25-6.0423(5)(c)2, 5, F.A.C. ON AN EMERGENCY BASIS**

Progress Energy Florida, Inc. ("PEF") moves the Florida Public Service Commission (the "Commission") to defer (1) the determination of the reasonableness of PEF's actual/estimated 2012 and projected 2013 construction expenditures and associated carrying costs for the Crystal River Unit 3 ("CR3") Uprate project ("CR3 Uprate project"), and (2) the approval of the long-term feasibility of completing the CR3 Uprate project under Rule 25-6.0423(5)(c)2 and 5, Florida Administrative Code ("F.A.C."), respectively, from Docket No. 120009-EI to the continuing Nuclear Cost Recovery Clause ("NCRC") docket in 2013. PEF further petitions on an emergency basis, as may be necessary, for a temporary variance or waiver of Rule 25-6.0423(5)(c)2 and 5, F.A.C. for this year only to enable the deferral of these specific CR3 Uprate project determinations from this docket to the 2013 NCRC docket.

**BACKGROUND**

1. On April 30, 2012, PEF filed the direct testimony and exhibits of Mr. Jon Franke and Mr. Thomas G. Foster in support of its actual/estimated 2012 and projected 2013 construction expenditures and associated carrying costs for the CR3 Uprate project consistent with Section 366.93, Florida Statutes, and Rule 25-6.0423(5), F.A.C. The testimony and exhibits of Mr. Franke included PEF's analysis of the long-term feasibility of completing the CR3 Uprate

project consistent with Rule 25.6.0423(5)(c)5, F.A.C. As Mr. Franke explained, PEF determined the reasonable course of action was to take steps to preserve the option of completing the final phase of the CR3 Uprate project on the current project schedule without unnecessarily incurring costs for the project pending a final decision whether to repair or retire CR3. Mr. Franke explained in his April 30, 2012 testimony the steps taken on the CR3 Uprate project to minimize costs in 2011 and 2012 to ensure that only those costs necessary to complete the final phase work have and will be incurred. This included slowing down or deferring CR3 Uprate project work where reasonable in order to preserve the option of completing the project as planned in the current refueling outage. Accordingly, PEF's actual/estimated 2012 and projected 2013 CR3 Uprate project costs and feasibility analysis reasonably reflect completion of the CR3 Uprate project on PEF's current project schedule.

2. Subsequent to PEF's April 30, 2012 filing for the CR3 Uprate project in this docket, and following extensive federal and state regulatory reviews and approvals, which postponed the close of the contemplated merger, Progress Energy, Inc. (PEF's former parent company) and Duke Energy, Inc. ("Duke Energy") ultimately completed their merger on July 2, 2012. As a result, PEF is now a wholly owned subsidiary of Duke Energy. The Duke Energy Board of Directors is now responsible for making the final decision relating to whether to proceed to repair or to retire and decommission the CR3 nuclear power plant. Based on the complexity of the decision to repair or retire CR3, and the significance to PEF and Duke Energy, and their customers, the Duke Energy Board has commissioned an independent study of the options, costs, and risks entailed in a decision to repair or retire CR3. This independent study is currently in process, but has not yet been completed, therefore, the final results of this study and their impact on the decision to repair or retire and decommission CR3 are not known at this time. Based on these circumstances that have taken place since PEF's April 30, 2012 filing, PEF

requests that the Commission defer its determination of the reasonableness of actual/estimated 2012 and projected 2013 CR3 Uprate project costs, and associated carrying costs, and its review of the long-term feasibility of completing the CR3 Uprate project until the following year's NCRC docket.

3. Conversely, the prudence of PEF's 2011 actual construction costs and associated carrying costs are not affected by any of these 2012 subsequent events with respect to the CR3 Uprate project in this docket. The Commission has all of the information necessary to make a prudence determination on PEF's 2011 actual construction costs and associated carrying costs for the CR3 Uprate project, and Rule 25-6.0423(5)(c)2, F.A.C. states that the Commission shall annually make a prudence determination of the prior year's actual construction costs and associated carrying costs. On March 1, 2012, PEF filed the direct testimony and exhibits of Mr. Will Garrett and Mr. Franke supporting the prudence of PEF's 2011 CR3 Uprate actual costs and project management, accounting, and cost oversight controls. The Commission Audit Staff reviewed PEF's CR3 Uprate 2011 costs and project management controls and their direct testimonies and exhibits were filed on June 19, 2012 in this docket. All intervenors were provided the opportunity to propound discovery during an extended discovery period and to file testimony and exhibits, which the Office of Public Counsel ("OPC") has done. The Commission and intervenors will further be provided ample opportunity to review the prudence of PEF's 2011 actual costs incurred at the final hearing to be held in this docket. Hence, the record for the Commission to review regarding these costs and decisions is complete. There is no additional information bearing on historical 2011 costs and decisions that the Commission needs to determine the prudence of PEF's 2011 actual CR3 Uprate project costs, accordingly, PEF is not requesting that the Commission defer the review and determination of PEF's actual, historical 2011 CR3 Uprate project costs.

## **REQUESTED RELIEF**

4. Rule 25-6.0423, F.A.C. implements Section 366.93, Florida Statutes. Section 366.93(2), Florida Statutes, required the Commission to establish alternative cost recovery mechanisms “designed to promote utility investment in” nuclear power plants and allow for the recovery in rates of all prudently incurred costs. Id. Rule 25-6.0423, F.A.C. establishes the required alternative cost recovery mechanisms for the recovery of prudently incurred nuclear power plant costs consistent with this legislative purpose. Rule 25-6.0423(5)(c)2 further provides in relevant part that the Commission shall conduct a hearing each year and determine the reasonableness of projected construction expenditures and the associated carrying costs. Rule 25-6.0423(5)(c)2, F.A.C. Rule 25-6.0423(5)(c)5, also provides that a utility shall submit each year for Commission review and approval a detailed analysis of the long-term feasibility of completing the power plant. Rule 25-6.0423(5)(c)5, F.A.C.

5. Pursuant to this legislative directive, PEF is entitled to a review and determination of the reasonableness of its estimated and projected CR3 Uprate project costs, absent a request that the Commission defer this review and determination. In light of the changed circumstances involving the merged company decision to conduct further analysis of the options and risks associated with repairing or retiring and decommissioning CR3, which remains incomplete at this time, PEF is requesting that the Commission defer its review and determination that the actual/estimated and projected CR3 Uprate project costs are reasonable, and defer its determination that the CR3 Uprate project is feasible. This request does not mean that the Company’s actual/estimated and projected CR3 Uprate project costs, and its feasibility analysis in its April 30, 2012 testimony and exhibits are incomplete or unreasonable at this time. However, due to the circumstances subsequent to the Company’s April 30, 2012 filing, PEF believes the best course of action at this time is to request that the Commission defer its review

and determination of the reasonableness of PEF's CR3 Uprate project actual/estimated 2012 and projected 2013 costs and the feasibility of completing the project.

6. Accordingly, PEF moves the Commission to defer the determination of the feasibility of completing the CR3 Uprate project and the reasonableness of the actual/estimated 2012 and projected 2013 CR3 Uprate project costs to the NCRC docket next year. If the Commission agrees that this is reasonable and grants the Company's motion, only the carrying costs on CR3 Uprate project expenditures incurred prior to January 1, 2012 will be reflected in the Company's 2013 rates. CR3 Uprate project expenditures in 2012 and 2013 will still be tracked in actual costs and accrue a carrying cost at the appropriate rate until recovered in rates after the Commission and all parties have reviewed PEF's updated feasibility analysis and cost projections in the 2013 NCRC docket. PEF has attached Exhibit A that reflects the changes that will occur upon approval of this motion. As can be seen on Exhibit A, the impact would be to reduce the revenue requirements placed in 2013 rates from \$49,005,381 million to \$40,062,500 million. PEF believes this is the reasonable course of action under the circumstances and, accordingly, PEF moves the Commission to defer review and approval of the feasibility of completing the CR3 Uprate project and the determination of the reasonableness of the 2012 actual/estimated and 2013 projected CR3 Uprate costs until the 2013 NCRC docket.

7. Upon request from the affected utility, the Commission has deferred determinations pursuant to the nuclear cost recovery statute and rule when the circumstances warranted the deferral of a determination. In Docket No. 110009-EI, the Commission granted PEF's Motion for Deferral and deferred determinations of reasonableness of actual/estimated 2011 and projected 2012 CR3 Uprate costs and feasibility to this 2012 NCRC docket based on cost and schedule impacts resulting from the March 2011 CR3 delamination. See Order No. PSC-11-0547-FOF-EI, Docket No. 110009-EI, (Nov. 23, 2011). In Docket No. 100009-EI, the

Commission agreed to defer consideration of all Florida Power & Light Company (“FPL”) issues until the next year (Docket No. 110009-EI) based on FPL’s agreement with OPC and Florida Industrial Power User’s Group (“FIPUG”) that more time was needed to further investigate certain cost issues. See Order No. PSC-11-0095-FOF-EI, Docket No. 100009-EI (Feb. 2, 2011). In Docket No. 080009-EI, the Commission agreed to defer the prudence determination for the Levy Nuclear Units 1 & 2 and the Turkey Point Units 6 & 7 projects from the 2008 NCRC docket to the 2009 NCRC docket. There, PEF’s and FPL’s respective petitions for cost recovery were amended in July and May, respectively, to include the new plants because they had only recently received affirmative need determinations. See Order No. PSC-08-0749-FOF-EI, Docket No. 080009-EI (Nov. 12, 2008). The Commission has, therefore, recognized that the NCRC is a continuing docket and, when warranted by the circumstances and requested by the affected utility, has deferred certain cost and/or feasibility determinations under the nuclear cost recovery rule to the subsequent docket year.

8. The current circumstances facing PEF and the CR3 Uprate project warrant the deferral of the review and approval of the feasibility analysis for the project and the determination of the reasonableness of the actual/estimated and projected 2012 and 2013 CR3 Uprate project costs to the NCRC docket next year. Accordingly, PEF moves the Commission to defer these Commission determinations from Docket No. 120009-EI to the 2013 NCRC docket.

**PETITION FOR EMERGENCY AND TEMPORARY WAIVER OR VARIANCE OF  
RULE 25-6.0423(5)(c) 2 AND 5 FOR THE 2012 NCRC DOCKET**

9. PEF, in an abundance of caution, alternatively petitions the Commission on an emergency basis for a temporary variance or waiver of Rule 25-6.0423(5)(c)2 and 5, F.A.C. for this year only to defer these specific CR3 Uprate project determinations from the 2012 NCRC docket to the 2013 NCRC docket.

10. A petition for emergency waiver or variance of a rule is appropriate when (1) the requirements of Section 120.542, Florida Statutes, for a rule waiver or variance are met, (2) the specific facts make the situation an emergency, and (3) the facts demonstrate that the petitioner will suffer an immediate adverse effect unless the variance or waiver is issued more expeditiously than the time frames provided in Section 120.542, Florida Statutes. See Rule 28-104.004, F.A.C. The time frames under Section 120.542, Florida Statutes, provide for a final determination on a requested petition for waiver or variance of a rule requirement within ninety (90) days after receipt of the petition. There is inadequate time under Section 120.542, Florida Statutes, then, to obtain a determination that the requested waiver or temporary variance of Rule 25-6.0423(5)(c)2 and 5 should be granted before the currently scheduled hearing for the NCRC docket commences on September 10, 2012. PEF will be denied its statutory right to request a variance or waiver of Rule 25-6.0423(5)(c) 2 and 5 under Section 120.542, Florida Statutes, unless the petition is considered an emergency request. See In re: Petition for a Determination of Need for an Electrical Power Plant in Martin County by Florida Power & Light Co., 2002 Fla. PUC LEXIS 378, Order No. PSC-02-0703-PCO-EI, Docket No. 020262-EI (May 23, 2002) (granting request for waiver of 90-day requirement to hold a need determination hearing on an emergency basis because a decision on the rule waiver petition on a non-emergency basis yielded a decision more than a month past the current need determination schedule). Accordingly, for the reasons provided below, PEF's petition for a temporary waiver or variance of the identified requirements in Rule 25-6.0423(5)(c)2 and 5, F.A.C. this year should be granted on an emergency basis.

11. Under Section 120.542, Florida Statutes, “[v]ariations and waivers shall be granted when the person subject to the rule demonstrates that the purpose of the underlying statute will be or has been achieved by other means by the person and when application of a rule

would create a substantial hardship or would violate principles of fairness.” § 120.542(2), Fla. Stats. A substantial hardship is “a demonstrated economic, technological, legal, or other type of hardship to the person requesting the variance or waiver.” Id. These statutory requirements are satisfied by the temporary variance or waiver this year of the requirements in Rule 25-6.0423(5)(c)2 and 5, F.A.C. that the Commission approve the Company’s filed feasibility analysis for the CR3 Uprate project and determine that the filed CR3 Uprate project costs are reasonable.

12. The purpose of Section 366.93, Florida Statutes, is to establish alternative cost recovery mechanisms in order to promote electric utility investment in nuclear power plants and allow for the recovery in rates of all such prudently incurred costs. § 366.93(2), Fla. Stats. Rule 25-6.0423(1), F.A.C. expressly implements this legislative purpose. Rule 25-6.0423(1), F.A.C. This statutory purpose can still be achieved if there is a temporary variance or waiver of the requirements to approve the feasibility of completing the CR3 Uprate project and determine the reasonableness of estimated and projected CR3 Uprate project costs this year. The Commission can determine the prudence of actual 2011 CR3 Uprate project construction costs and associated carrying costs this year and allow for the recovery of the prudently incurred CR3 Uprate project costs consistent with Section 366.93. Further, the Commission can still allow for the recovery of all prudently incurred 2012 CR3 Uprate project costs consistent with Section 366.93 following a prudence determination next year if the temporary variance or waiver of Rule 25-6.0423(5)(c) 2 and 5, F.A.C. is granted this year. Thus, the purpose of Section 366.93, Florida Statutes, will be achieved if the temporary variance or waiver is granted. See generally, In re: Review of 2007 Electric Infrastructure Storm Hardening Plan filed pursuant to Rule 25-6.0342, F.A.C. submitted by Florida Public Utility Company, Order No. PSC-07-0558-FOF-EI, Docket No. 070300-EI (July 3, 2007) (finding that underlying purpose of the statute would be met even with the

granting of a waiver to provide an additional 60 days to file a storm hardening plan because Florida Public Utility Company did not seek to be excused altogether and the extension would not deny staff or intervenors the opportunity to review and evaluate the plan).

13. The determination of what is a hardship and what makes it substantial is made by the agency that enacted the rule consistent with the legislative policy the rule implements. See generally, Fla. Dep't of Bus. & Prof'l Regulation, Div. of Para-Mutuel Wagering v. Inv. Corp. of Palm Beach, 747 So. 2d 374, 383 n7 (Fla. 1999) (“[Section 120.542] is intended to give agencies much-needed flexibility to address unique or unusual situations that are not contemplated by agency rules that, by necessity, are written to address general circumstances.”) (quoting, Blanton & Rhodes, Flexibility, Flexibility, Flexibility, The New Variance & Waiver Provision, Fla. B.J., Mar. 1997 at 35, 38-39). The Florida Legislature deferred to the Commission the enactment of alternative cost recovery mechanisms for nuclear power plant costs consistent with the Legislative purpose that the Commission’s cost recovery mechanisms promoted utility investment in nuclear power plants and allowed for the recovery in rates of all prudently incurred costs. § 366.93(1), (2), Fla. Stats. The Commission, therefore, has the discretion to determine what warrants a waiver of its requirements for review and approval of feasibility analyses and the reasonableness of projected costs on nuclear power plant projects under the substantial hardship test of Section 120.542.

14. The Commission can find that there is a substantial hardship to PEF if strict compliance with the requirements in Rule 25-6.0423(5)(c)2 and 5 F.A.C., is required this year. These specific requirements exist only in Rule 25-6.0423, F.A.C. They are not requirements under Section 366.93, Florida Statutes. They exist to assist the Commission in its review and approval of costs incurred on nuclear power plant projects and to promote the utility investment in nuclear power plants by allowing recovery of reasonable projected costs subject to true-up and

a subsequent determination that the costs were prudently incurred. As a result, the Commission can temporarily waive or grant a variance of these specific requirements this year and preserve these benefits of the rule in the continuing NCRC docket next year.

15. In fact, PEF, the Commission, and all other parties to this docket will benefit from the temporary waiver or variance of these requirements this year because they will have the benefit of the on-going, current update of the information required by these rule requirements in the NCRC docket next year. Applying these rule requirements this year, therefore, would be a substantial hardship. See generally, Order No. PSC-07-0557-FOF-EI (July 2, 2007) (rule waiver granted when FPUC intended to comply with filing requirement and staff and others had the opportunity to review and evaluate the plan when filed); In re: Petition for waiver of Rule 25-17.250(1) and (2)(a), F.A.C., 2008 Fla. PUC LEXIS 523, Order No. PSC-08-0706-TRF-EI, Docket No. 080501-EI (Oct. 23, 2008) (waiving rule requiring filing of standard offer contract when it was factually inapplicable to PEF's situation). Indeed, strict application of these requirements in Rule 25-6.0423(5)(c) 2 and 5, F.A.C. at this time imposes on PEF a requirement that does not serve the purpose of the statute or even these rule requirements at this time. See generally, In Re: Request for waiver of carrier selection requirements of Rule 25-4.118, F.A.C., 2007 Fla. PUC LEXIS 647, Order No. PSC-07-0999-PAA-TX, Docket No. 070611-TX (Dec. 12, 2007) (waiving individual customer authorization of carrier change rule requirement when strict compliance served no useful purpose because adequate public notice to customers was provided and individual authorization could cause confusion and claims to detriment of utility and customers).

16. No other person or entity can claim any prejudice if a waiver or variance is granted. Because the information required by these specific requirements is currently being assessed and will be updated no party will be prejudiced by the temporary waiver or variance of

these requirements until next year when updated information will be available. See generally, In re: Petition for a Determination of Need for an Electrical Power Plant in Martin County by Florida Power & Light Co., 2002 Fla. PUC LEXIS 378, Order No. PSC-02-0703-PCO-EI, Docket No. 020262-EI (May 23, 2002) (granting request for waiver of 90-day requirement to hold a need determination hearing so that a second request for proposals (RFP) could be issued, potentially avoiding the substantial hardship of expensive, complicated litigation over issues the second RFP might resolve). Customers and potential intervenors will have ample notice of and an opportunity to participate in the NCRC docket next year when updated information will be addressed under Rules 25-6.0423(5)(c)2 and 5, F.A.C.

17. For purposes of this petition for temporary waiver or variance of Rule 25-6.0423(5)(c)2 and 5, F.A.C. on an emergency basis the Petitioner's name and address are: Progress Energy Florida, Inc., 299 1<sup>st</sup> Avenue North, St. Petersburg, Florida 33701. Any pleading, motion, notice, order, or other document required to be served upon PEF or filed by any party to this proceeding should be served upon the following individuals:

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18. As explained above, the Commission can grant a temporary waiver or variance this year of the identified requirements of Rule 25-6.0423(5)(c)2 and 5, F.A.C. on an emergency basis under Section 120.542 when (1) the purpose of the rule will otherwise be satisfied even though the rule is waived and (2) substantial hardship of a technological, economic, legal, or other type of hardship will result from compliance with the rule. § 120.542(2), Fla. Stat. Both requirements are met here and, therefore, PEF's petition should be granted.

#### **CONFERENCE WITH OTHER PARTIES**

19. Pursuant to Rule 28-106.204(3), F.A.C., PEF has conferred or attempted to confer with all parties of record and is authorized to represent that OPC does not oppose this motion, the Florida Retail Federation ("FRF") does not oppose this motion, FIPUG takes no position on this motion at this time, the Southern Alliance for Clean Energy ("SACE") takes no position on this motion, Federal Executive Agencies ("FEA") takes no position on this motion, and FPL takes no position on this motion. PEF was not able to obtain the position of White Spring Agricultural Chemicals, Inc d/b/a PCS Phosphate – White Springs ("PCS Phosphate") by the time of the filing of this motion.

WHEREFORE, for the all the reasons stated above, PEF respectfully requests the Commission to defer its review and approval of the feasibility analysis for the CR3 Uprate project and its determination of the reasonableness of the CR3 Uprate project actual/estimated 2012 and projected 2013 costs to the 2013 NCRC docket, approve spending in 2012 and 2013 to accrue a carrying cost at the appropriate rate until recovered in rates, and, to the extent necessary, grant PEF's petition for an emergency, temporary waiver of these requirements in Rule 25-6.0423(5)(c)2 and 5, F.A.C. this year to accomplish the deferral of these determinations to the 2013 NCRC docket. Upon the Commission's approval of this request, PEF will submit revised testimony for Mr. Foster and PEF will update Exhibit No. \_\_\_\_ ( TGF-4) and Exhibit No. \_\_\_\_ (TGF-5) to reflect the appropriate revenue requirements for 2013 consistent with this Motion.

Respectfully submitted,

s/ Blaise N. Gamba

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**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY a true and correct copy of the foregoing has been furnished to counsel and parties of record as indicated below via electronic and U.S. Mail this 14<sup>th</sup> day of August, 2012.

\_\_\_\_\_  
s/ Blaise N. Gamba

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The result of deferring a finding of reasonableness on the 2012 and 2013 projected spend would be to reduce the 2013 revenue requirements for ratemaking purposes down from the previously filed \$49,005,381 to \$40,062,500. PEF has calculated this amount by simply removing any spend from the previously filed 2012 and 2013 NFR schedules. This has the effect of calculating a carrying cost on all spend incurred prior to 2012. See below for a brief summary of the changes.

**Impact to 2013 Revenue Requirements for Rate Setting Purposes of Deferring 2012 & 2013 Projection Reasonableness Finding**

	<u>April 30 Filing Revenue Requirements</u>	<u>Adjusted Revenue Requirements</u>	<u>Change</u>
Carrying Cost on Additions	34,756,951	28,401,158	(6,355,793)
Carrying Cost on Deferred Tax	2,069,976	1,951,664	(118,312)
Allocated or Assigned O&M	472,466	173	(472,293)
Other Adjustments	<u>(3,587)</u>	<u>(3,587)</u>	<u>-</u>
Total Projected Period Amount	37,295,806	30,349,407	(6,946,398)
Prior Period True-Up Provision	11,674,317	9,684,269	(1,990,048)
Total Projected Period Amount	48,970,123	40,033,676	(8,936,447)
Revenue Tax Multiplier	<u>1.00072</u>	<u>1.00072</u>	<u>1.00072</u>
<b>Total 2013 Projected Revenue Requirement</b>	<b><u><u>49,005,381</u></u></b>	<b><u><u>40,062,500</u></u></b>	<b><u><u>(8,942,881)</u></u></b>