Dorothy Menasco

From:	Costello, Jeanne <jcostello@carltonfields.com>
Sent:	Friday, April 26, 2013 4:36 PM
To:	Filings@psc.state.fl.us
Cc:	Gamba, Blaise N.; 'Charles Rehwinkel'; 'Dianne Triplett'; 'Erik L. Sayler'; 'F. Alvin Taylor'; 'James Brew '; 'John Burnett'; 'Jon C. Moyle Jr. '; Keino Young; Bernier, Matthew R.; Michael Lawson; Walls, J. Michael; 'Monica Woods'; 'Myndi Qualls'; 'Paul Lewis Jr. '; 'Schef Wright '; Lee Eng Tan
Subject:	Docket 100437 Electronic Filing (with attachment)
Attachments:	Docket 100437 PEF Reply Brief to Intervenor's Joint Brief_1.pdf

Electronic Filing
Docket No. 100437-EI
In re: Examination of the outage and replacement fuel/power costs associated with the CR3 steam generator replacement project, by Progress Energy Florida, Inc.

a. Person responsible for this electronic filing:

Blaise N. Gamba
Carlton Fields, P.A.
P.O. Box 3239
Tampa, FL 33601
Telephone: (813) 229-4328
Email: bgamba@carltonfields.com

b. Document being filed on behalf of Progress Energy Florida, Inc.

c. There are a total of seventeen (17) pages.

d. The document attached for electronic filing is: Progress Energy Florida, Inc.' s Reply Brief to Intervenors' Joint Brief.

I apologize for the missed attachment the first filing/service.

Jeanne Costello
Legal Admin Assist/Florida Registered Paralegal
Florida Bar No. 256251
4221 W. Boy Scout Blvd., Ste. 1000
Tampa, Florida 33607-5780

Direct: 813.229.4917 | Fax: 813.229.4133
jcostello@carltonfields.com | www.carltonfields.com

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Examination of the outage and replacement fuel/power costs associated with the CR3 steam generator replacement project, by Progress Energy Florida, Inc.	DOCKET NO.: 100437-EI Filed: April 26, 2013

PROGRESS ENERGY FLORIDA, INC.'S REPLY BRIEF TO INTERVENORS' JOINT BRIEF

Progress Energy Florida, Inc. ("PEF" or the "Company") submits this brief in reply to the Intervenors' Joint Brief pursuant to Florida Public Service Commission ("FPSC" or the "Commission"), Order No. PSC-13-0155-PCO-EI granting the Joint Motion of the Parties to Resolve Certain Disputed Case Issues.[1]

I. INTRODUCTION

The Intervenors' Joint Brief demonstrates the following three facts, each of which will be addressed in turn in this reply:

(1). Despite the rhetoric and extraneous positions in their Joint Brief, the Intervenors actually do understand what the proper ultimate remaining issue in this case is;

(2). The Intervenors misunderstand PEF's position as to what evidence the Commission can consider in resolving this ultimate issue; and

(3). The Intervenors selectively ignore substantive sections of the Settlement Agreement they signed with PEF in order to advance their incorrect legal arguments.[2]

[1] The Intervenors are the Office of Public Counsel ("OPC"), the Florida Retail Federation ("FRF"), the Florida Industrial Power Users Group ("FIPUG"), and White Springs Agricultural Chemicals, Inc. d/b/a PCS Phosphate – White Springs ("White Springs") (collectively referred to as the "Intervenors" in PEF's Reply Brief).

[2] Reference to the "Settlement Agreement" is to the Stipulation and Settlement Agreement approved by the Commission in Order No. PSC-12-0104-FOF-EI.

II. ARGUMENT

(A). Despite Their Arguments to the Contrary, the Intervenors Actually do Understand What the Remaining Ultimate Issue in this Case is.

On page 8 of the Intervenors Joint Brief, the Intervenors state that "the focal point of the remaining dispute" in this docket is whether PEF was imprudent in accepting the settlement agreement that it entered into with the Nuclear Electric Insurance Limited ("NEIL") to resolve PEF's Crystal River Unit 3 ("CR3") claims with NEIL. We agree. In fact, PEF offered the following issue in issues conferences with Staff and the parties, and this issue goes to the heart of what the Intervenors call "the focal point of the remaining dispute;"

> **Issue 4:** Was Duke's decision to settle DEF's claims with Nuclear Electric Insurance Limited regarding the CR3 outage on the terms set forth in the settlement agreement between DEF and NEIL reasonable and prudent? If not, what action, if any, should the Commission take?

See PEF Brief, Attachment A.

Further demonstrating their apparently unknown appreciation of the propriety of this ultimate issue, the Intervenors state on page 13 of their Joint Brief that their case in chief will:

> [D]emonstrate that the "gap" in what Duke received from NEIL and what was available under the policy coverage was at least $750 million assuming that the plant would not be repaired and assuming that the entire set of facts constituted a single event for coverage purposes.

Again, PEF takes no issue with the Intervenors presenting such a case if they can. The Intervenors further state on page 21 of their Joint Brief that the Settlement Agreement between the Intervenors and Duke did not waive the Intervenors right to "a full examination and determination of Duke's actions in pursuing and agreeing to only

$835 million from NEIL against nominal policy limits of $2.715 billion." Again, PEF agrees that the Intervenors do have the right to have an examination and determination of these issues.

Despite the fact that PEF and the Intervenors do agree as to what the Commission must ultimately determine as the overriding remaining issue in this case, the Intervenors continue to assert a handful of disputed issues the pre-hearing officer must resolve. Intervenors Joint Brief, p. 11. PEF addresses each of these disputed issues below and demonstrates why it is either improper or unnecessary:

> **OPC 7: Did DEF maintain adequate and appropriate accidental outage and property damage insurance coverage for CR3?**

Under this issue, the Intervenors ask the Commission to go back years before the 2009 delamination at CR3 took place and determine whether PEF adequately insured the plant prior to the delaminations ever taking place. Notwithstanding the fact that the Intervenors have known about PEF's policies with NEIL for decades, and notwithstanding the fact that PEF sought and received as prudent costs associated with obtaining those policies in every base rate proceeding it has had, the Intervenors now try to avoid these facts and the settlement that they signed with PEF and have a "trial within a trial" on this ancillary issue. In fact, one intervenor offered, and apparently has now withdrawn, the following issue which questioned whether it was prudent for PEF to have ever contracted with NEIL for insurance at all back when CR3 went online in the late 1970's:

> **Issue ___**: Was it prudent for DEF to procure insurance for CR3 from an insurance company not licensed or registered to do business in Florida? (New Disputed Issue)

See PEF Brief, Attachment A. The Commission cannot and should not consider issues that have been known and resolved for years, especially when they do nothing more

than distract from the real issue remaining in this case— Was PEF prudent in settling its claims with NEIL for the amounts received?

OPC 8: Did DEF maintain a prudent arm's length relationship with NEIL in all dealings, including negotiation of the scope of policy coverage, endorsement provisions and other amendatory and/or change activities related to the terms and conditions of the NEIL Policies?

As with the issue OPC 7 discussed above, issue OPC 8 also attempts to improperly go back decades and question whether PEF was prudent in contracting with NEIL in the first instance. Notwithstanding the well-known fact that NEIL is a mutual insurance company created and owned by the nuclear utilities in the United States because no other entity will provide full insurance coverage for nuclear plants, the Intervenors invite the Commission to ignore the years that PEF has openly contracted with NEIL and sought recovery for each and every NEIL premium in base rate proceeds and to additionally ignore the Settlement Agreement that the Intervenors signed with PEF that precludes this decades-long look back. As with issue OPC 7, this argument does nothing more than distract from the real and ultimate prudence issue that the Commission must address regarding the NEIL settlement.

OPC 9: Was DEF's decision-making prudent with respect to the pursuit (or lack thereof) of claims, if any, against any vendor on the SGR Project or CR3 delamination repair project?

As is evident on the very face of this issue, issue OPC 9 does not relate to NEIL at all. In one of the grossest and most evident attempts to avoid the Settlement Agreement that they signed, the Intervenors now want the Commission to go back to the periods in which the delaminations at CR3 took place and question whether PEF was prudent in not suing third-party vendors that worked on the SGR and/or repair project. The Intervenors take this unsupportable position despite the fact that they

themselves admit on page 17 of their Joint Brief that the plain language of the Settlement Agreement expressly bars the consideration of actions taken in connection with the SGR project and the repair activities associated with the delaminations. In other words, the Intervenors take the dubious and incorrect position that legal action or lack of legal action against vendors hired to work on the SGR project and the CR3 repairs are not actions taken in connection with or associated with the SGR project and the CR3 repairs. This issue is barred by the Settlement Agreement on its face and as a matter of simple logic and common sense.

OPC 13: As one of the largest members of NEIL, a mutual insurance company, did Duke Energy have a conflict of interest when negotiating with NEIL for insurance proceeds? If so, was that conflict of interest made known to the Commission and intervening parties?

Contrary to the Intervenors' assertions in their Joint Brief, PEF does not object to issue OPC 13 as being barred by the Settlement Agreement. Rather, PEF objects to this issue because it is a position of a party rather than an issue, and that position can be argued under the ultimate prudence issue that PEF has proposed. In other words, Intevenors assume in their statement of this issue that the determination of whether Duke Energy has a conflict of interest or not depends on its size (however Intervenors purport to measure it, which is unclear), relative to the other members of NEIL, an assumption that certainly is not factually accurate on its face and that PEF disputes. Further, PEF objects to the second part of this issue asking whether any such alleged conflict of interest was brought to the Commission's attention because it is a "so what" issue that does not and cannot lead to Commission action regardless of whether it is answered yes or no. Again, PEF fails to see how the "size" of Duke Energy relative to the other members of NEIL was a relevant point of information for the Commission or

the Intervenors. The confusing assertions made by the Intervenors here further demonstrate the fundamental misunderstanding they have with PEF's positions in this matter (as discussed in detail in Subsection C of this Reply Brief below) and perhaps with their own case.

OPC 24: What is the amount of CR3 O&M expense currently in rates, if any, and what action should the Commission take at this time with respect to this expense as a result of the DEF decision to retire the CR3 unit?

Oddly, the Intervenors contend in their Joint Brief that because of all the *NEIL specific* assertions listed on page 10 and 11 of their Joint Brief, the Commission should rule that issue OPC 24 is not barred by the Settlement Agreement and is critical to resolving *the NEIL issues* at hand. The Intervenors assert this position despite the fact that: (1) this issue has nothing to do with NEIL; and (2) OPC has withdrawn this issue. See PEF's Reply Brief, Attachment A (E-mail from OPC withdrawing issue OPC 24). These misplaced arguments from the Intervenors continue to show their apparent confusion as to what the dispute is that this Commission has to resolve.

In summary, there is only one proper NEIL issue that the Commission can and should decide in this docket, and it is as follows:

> Was Duke's decision to settle PEF's claims with Nuclear Electric Insurance Limited regarding the CR3 outage on the terms set forth in the settlement agreement between PEF and NEIL reasonable and prudent? If not, what action, if any, should the Commission take?

(B). The Intervenors Misunderstand PEF's Position as to What Evidence the Commission Can Consider in Resolving this Ultimate Issue

On page 22 of their Joint Brief, the Intervenors state that "there is nothing [in the settlement with PEF] which prohibits discovery of, or inquiry into, facts relating to the period prior to February 23, 2012." As a general matter, we agree. Large sections of the Intervenors' Joint Brief are dedicated to incorrect allegations that PEF is attempting

to limit or preclude evidence that the Commission can consider in resolving the ultimate NEIL prudence issue as demonstrated below:

Intervenor Assertion	Page in Joint Brief	PEF Position
The Commission can consider the NEIL policies.	12	PEF agrees.
The Commission can consider invoices and documents submitted to NEIL.	12	PEF agrees.
The Commission can consider PEF's course of dealing with NEIL.	12	PEF agrees.
The Commission can consider interactions at all corporate levels between PEF and NEIL.	12	PEF agrees.
The Commission can consider PEF's overall corporate motivation for accepting the NEIL settlement.	12	PEF agrees.
The Commission can consider the impact of the merger on PEF's motivation for accepting the NEIL settlement.	12	PEF agrees.
The Commission can consider insurance recovery strategies that PEF did not pursue in resolving its claims with NEIL.	12	PEF agrees.
The Commission can consider how insurance claims were processed.	12	PEF agrees.
The Commission can consider the amount received from NEIL relative to the policy limits.	12	PEF agrees.
The Commission can consider whether the insurance claims were handled properly.	12	PEF agrees.
The Commission can consider why NEIL stopped making payments to PEF.	13	PEF agrees.
The Commission can consider why PEF made public statements about full applicability of the policy limits in conjunction with the ultimate amount received from NEIL.	13	PEF agrees.
The Commission can consider the nature of the NEIL policy provisions and policy changes over time.	13	PEF agrees.
The Commission can consider the relationship between PEF and NEIL.	13	PEF agrees.

Where PEF and the Intervenors disagree, however, is the second part of the Intervenors' assertion on page 22 of their Joint Brief where they state that the Settlement Agreement "does not relieve [PEF] from being fully held accountable for its actions during [the period prior to February 23, 2012]". For example, the Intervenors apparently believe that PEF negotiated an imprudent insurance policy with NEIL long before the delaminations at Crystal River 3 ever took place, and they assert that PEF should be held "fully accountable" for this alleged imprudence. There is nothing in the Settlement Agreement that PEF has with the Intervenors or in the law that prevents the Commission from reviewing these polices, or from even coming to the determination (if the evidence supports it) that the policies are poorly drafted, ambiguous, or "bad." What the Commission cannot do, however, is hold PEF imprudent for entering into those policies decades ago because the Settlement Agreement has resolved that issue and because that issue has been previously adjudicated in base rate proceedings. Said another way, the NEIL polices "are what they are" for the purposes of this case, and the question the Commission has to answer is whether PEF was prudent in accepting the settlement with NEIL given those policy provisions and the facts that PEF had before it.

In summary, PEF is in no way suggesting that the Commission cannot consider all proper evidence put before it going back well before the Implementation Date of the Settlement Agreement. Rather, PEF contends that the Commission cannot and should not accept the Intervenors' invitation to do violence to the Settlement Agreement and to settled issues that span the course of years into the past.

(C). **The Intervenors Selectively Ignore Substantive Sections of the Settlement Agreement They Signed with PEF in Order to Advance Their Incorrect Legal Arguments**

The Intervenors assert their NEIL claim issues – OPC 7 and OPC 8 above – in complete disregard for what they expressly agreed was the framework to address the pending NEIL claims in paragraphs 10b and 11 after agreeing to the express waiver in paragraph 7 of the Settlement Agreement. Intervenors agreed in their own words that they waived their claims and avoided "further litigation concerning the prudence of [the Company's] actions and decisions related to the [CR3] steam generator replacement ("SGR") project and repairs of the CR3 containment building delaminations." (Intervenors' Joint Brief, p. 1) (emphasis added). Having done so by broadly waiving their rights in paragraph 7, Intervenors understood any remaining right to challenge the prudence of PEF's resolution of its NEIL claims was limited. They, accordingly, agreed only to the right to provide input during the NEIL claim resolution process and, if necessary, to challenge the prudence of that process in paragraph 10b, and to review the allocation of NEIL insurance proceeds in accordance with paragraph 11, in the event PEF decided to retire CR3. This is why there is no reservation by the Intervenors of a right to challenge the prudence of the issues raised in Intervenors' NEIL claim issues (OPC 7 and OPC 8) in paragraphs 10b or 11 of the Settlement Agreement.

Intervenors completely ignore what they agreed to in paragraphs 10b and 11 of the Settlement Agreement in their Joint Brief. PEF expects that in their reply brief, they will assert that these provisions do not matter because the parties provided in paragraph 2 that they reserved all rights unless such rights are expressly waived under the terms of the Settlement Agreement and there is no such express waiver of their

rights to raise their NEIL claims issues (OPC 7 and OPC 8) in paragraphs 10b and 11 of the Settlement Agreement. They will assert again, as they have done in their Joint Brief, that the express waiver in paragraph 7 is narrower than it is actually written, the provision does not waive their allegedly "separate and apart" NEIL claims issues, and there is no such express waiver in paragraphs 10b or 11 of the Settlement Agreement. This argument is legally incorrect and defies any logical interpretation of the Settlement Agreement.

Paragraphs 10b and 11 make no sense under the Intervenors' argument. If the express waiver in paragraph 7 was as limited as Intervenors now argue, which is not the case under the clear and unambiguous terms of that provision, then the parties would have provided for a more expanded scope of prudence review for the Company's NEIL claims than they actually provided in paragraphs 10b and 11 of the Settlement Agreement. Nowhere in these paragraphs do the parties even suggest that the Intervenors will review the NEIL claims issues they have now raised (OPC 7 and OPC 8). It simply defies common sense to suggest that these NEIL claims issues would not have been addressed in paragraphs 10b and 11, where the parties expressly provided the framework for review of the pending resolution of the Company's NEIL claims, if the express waiver in paragraph 7 of the Settlement Agreement is as narrow as the Intervenors now suggest.[3]

[3] To explain this point further, the parties to the Settlement Agreement fully understood that PEF had insurance policies with NEIL for CR3, what the terms and conditions of those policies were, and that PEF had pending claims under those policies at the time of the Settlement Agreement. The Intervenors never asserted the right to challenge the prudence of this insurance decision in the first place or the terms and conditions of the NEIL policies in the Settlement Agreement. Rather, all parties accepted the existence of this insurance and agreed in paragraph 10b that the Intervenors had the right to provide input during the NEIL claims process based on the known terms and conditions of the NEIL policies for CR3. The parties expressly provided only

The only common sense, logical reading of these paragraphs is that there is no express waiver in paragraphs 10b and 11 because the parties understood that express waiver is in paragraph 7 of the Settlement Agreement. There was no reason to reiterate the express waiver in paragraph 7 in paragraphs 10b and 11 because the Settlement Agreement provisions are intended to be read together, as a whole, just like any other contract. (PEF Brief, pp. 10-11).[4] Reading the Settlement Agreement in this common sense, legally accurate manner, when the parties provided for the framework for resolution of the pending, but not yet resolved PEF NEIL claims in paragraphs 10b and 11, they understood that they had already expressly waived all claims through the Implementation Date in paragraph 7 and, therefore, provided only for Intervenors' participation in the NEIL claim resolution process, the review of the prudence of that process, and the allocation of the NEIL proceeds in the event CR3 was retired in paragraphs 10b and 11 of the Settlement Agreement. This is the only logical explanation for why the parties did not address Intervenors' present NEIL claims issues when they were setting forth in detail the framework for the resolution of the NEIL claims in these paragraphs of the Settlement Agreement.

PEF's construction of paragraphs 7, 10b, and 11 comports with the unambiguous terms of the Settlement Agreement, read together as a whole, and given the commonly understood meaning of the contract terms, as the law requires for the

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that the Intervenors were not precluded from challenging the reasonableness or prudence of the "course of action" or process of resolving the NEIL claims under the NEIL policies. (See PEF Brief, pp. 7-8, 15-16; Attachment B, Settlement Agreement, ¶ 10b).

[4] Robbie v. City of Miami, 469 So. 2d 1384, 1385 (Fla. 1985) (settlements are contracts and governed by rules of contract interpretation); Triple E. Devel. Co. v. Floridagold Citrus Corp., 51 So. 2d 435, 438-39 (Fla. 1951) (contractual language should not be read in isolation and taken out of context, but should instead be interpreted in context and in light of the contract as a whole); Huntington on the Green Condominium v. Lemon Tree I-Condominium, 874 So. 2d 1, 4-5 (Fla. 5th DCA 2004) (same).

construction of Settlement Agreements. (PEF Brief, pp. 10-14).[5] On the other hand, the Intervenors' ignore paragraphs 10b and 11 in their Joint Brief, and they logically cannot avoid the common sense meaning of these provisions that make clear the Intervenors' NEIL claims issues are barred by the Settlement Agreement.[6]

As PEF made clear in its initial brief, the Intervenors' construction of the waiver provision in paragraph 7 of the Settlement Agreement is contrary to the commonly understood meaning of all the terms of that paragraph in the Settlement Agreement. (See PEF Brief, pp. 3, 6-7, 16; Attachment B, Settlement Agreement, ¶¶ 7, 10b). Intervenors cannot logically read terms such as "SGR project" and "repair activities" out of context of the breadth of the waiver terms that surround these terms in the Settlement Agreement. It further defies common sense and the commonly understood meaning of the breadth of the waiver in paragraph 7 to claim as the Intevenors do that the Company's NEIL claims, and therefore the NEIL claim process, are "separate and

[5] Harris v. Sch. Bd. of Duval County, 921 So. 2d 725, 733 (Fla. 1st DCA 2006) ("Where the language of a contract is unambiguous, there is no occasion for judicial construction. Clear contract language controls."); Gold Coast Media, Inc. v. Meltzer, 751 So. 2d 645, 646 (Fla. 3d DCA 1999) ("It is fundamental that courts should apply the most commonly understood meaning with regard to the subject matter and circumstances of the contract."); Baker and Co., Florida v. Goding, 317 So. 2d 118 (Fla. 3d DCA 1975) (same). See also Robbie, 469 So. 2d at 1385; Triple E. Devel. Co., 51 So. 2d at 438-39; Huntington on the Green Condominium, 874 So. 2d at 4-5).

[6] The Intervenors erroneously rely on several authorities recognizing the Commission's broad authority to set rates. (Intervenor Parties' Joint Brief, pp. 8-9). The Commission, however, is not setting rates in this proceeding. Rather, the Commission is sitting in its quasi-judicial role to determine the prudence of utility decisions. The long established prudence standard, by definition, requires that the Commission determination be made after the fact, based on "what a reasonable utility manager would have done in light of conditions and circumstances which were known or reasonably should have been known at the time the decision was made." *See, e.g., In Re: Investigation of Fuel Cost Recovery Clause of Electric Utilities*, Order No. 13452, 1984 WL 918882 (Fla. P.S.C. June 22, 1984); *In Re: Nuclear Cost Recovery Clause*, Order No. PSC-09-0783-FOF-EI, 2009 WL 4046862 (Fla. P.S.C. Nov. 19, 2009). The fact that the outcome of this prudence review may affect customer rates does not make this a "rate fixing process."

apart" from and have nothing to do with either the SGR project or the delamination repair activities. (Intervenors' Joint Brief, pp. 14-16).

Intervenors' argument is meritless because it fails to read all the waiver terms together, giving all the language its commonly understood, and unambiguously clear meaning.[7] The terms "SGR project" and "repair activities" do not appear in isolation in paragraph 7; rather, these terms are included in an express waiver of the Intervenors' rights to challenge the prudence of PEF's actions taken during the period from the SGR project inception through the Implementation Date "in connection with" the SGR project "or" the repair activities "associated with" the delaminations, "including but not limited to" the actions which resulted in the CR3 delaminations. (PEF Brief, pp. 5-7, 9-12, Attachment B, Settlement Agreement, ¶ 7). The waiver language of this provision is all encompassing, and requires only that the NEIL claims process be "connected with" the SGR project "or" the repair activities "including but not limited to" the delaminations. No one can reasonably contend that the NEIL claims are not connected with these events.[8] Indeed, as PEF demonstrated in its initial brief, there is no other reason for the NEIL claims. (PEF Brief, pp. 3, 5-7, 16).

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[7] (PEF Brief, pp. 10-15); Gold Coast Media, Inc., 751 So. 2d at 646; Baker and Co., 317 So. 2d at 118. Intervenors also cite cases, e.g., Pafford v. Standard Life Ins. Co. of Indiana, 52 So. 2d 910 (Fla. 1951); Walgreen Co. v. Habitat Dev. Corp., 655 So. 2d 164, 165 (Fla. 3d DCA 1995) that support PEF's position. Tellingly, for example, the Court in Pafford decided that the contract terms at issue were unambiguous based on the terms themselves and prior constructions of the very same terms by the Court. Pafford, 52 So. 2d at 910. In other words, the Court looked to contract constructions to aid the Court's understanding of the clear and unambiguous terms of the contract. See PEF Brief, pp. 10-13.

[8] Indeed, as PEF notes above, the Intervenors acknowledge, as they must, that the Settlement Agreement avoided any further litigation concerning the prudence of PEF's actions and decisions "related to" the CR3 SGR project, repairs, and delaminations. (Intervenors' Joint Brief, pp. 1, 14, 17). This means PEF's actions and decisions prior to the Implementation Date with respect to the NEIL claims "related to" the CR3 SGR project and repairs of the CR3 delaminations too.

For all these reasons, the Intervenors' NEIL claims issues (OPC 7 and OPC 8) are improper and cannot be included as issues in this Docket. They are barred by the clear and unambiguous terms of the Settlement Agreement. There is a straightforward, "bright line" waiver in the Settlement Agreement that makes clear that the Commission can determine the prudence of PEF's actions and decisions after, but not before, the Implementation Date. Intervenors' NEIL claim issues --- OPC 7 and OPC 8 --- address PEF actions or decisions before the Implementation Date and are, therefore, barred by the Settlement Agreement.

III. Conclusion.

For all the reasons stated above, PEF respectfully requests that the Pre-Hearing Officer issue an order stating that:

1. The only issue related to NEIL insurance coverage that the Commission will resolve in this docket is: *Was Duke's decision to settle PEF's claims with Nuclear Electric Insurance Limited regarding the CR3 outage on the terms set forth in the settlement agreement between PEF and NEIL reasonable and prudent? If not, what action, if any, should the Commission take?*

2. The Commission can and may consider all relevant evidence in resolving the single NEIL issue stated above and is not constrained by any time frame in doing so; and

3. The Settlement Agreement precludes the Intervenors from arguing that PEF acted imprudently with respect to any actions related to any issues in this docket prior to February 23, 2012.

Such an order will provide a clear and straight-forward path for all parties in this matter to present their cases and have the ultimate question of PEF's prudence resolved in a timely and efficient manner.

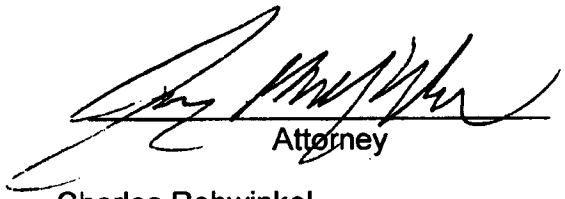
Respectfully submitted,

John T. Burnett
Deputy General Counsel
Dianne M. Triplett
Associate General Counsel
PROGRESS ENERGY SERVICE
COMPANY LLC
Post Office Box 14042
St. Petersburg, FL 33733-4042
Telephone: (727) 820-5587
Facsimile: (727) 820-5519

Peter D. Webster
Florida Bar No. 185180
James Michael Walls
Florida Bar No. 0706242
Blaise N. Gamba
Florida Bar No. 0027942
Matthew R. Bernier
Florida Bar No. 0059886
CARLTON FIELDS, P.A.
Post Office Box 3239
Tampa, FL 33601-3239
Telephone: (813) 223-7000
Facsimile: (813) 229-4133

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 26th day of April, 2013.



Attorney

Keino Young
Theresa Lee Eng Tan
Michael Lawson
Florida Public Service Commission Staff
2540 Shumard Oak Boulevard
Tallahassee, FL 32399-0850
Phone: (850) 413-6218
Facsimile: (850) 413-6184
Email: kyoung@psc.state.fl.us
ltan@psc.state.fl.us
mlawson@psc.state.fl.us

Charles Rehwinkel
Associate Counsel
Erik Sayler
Associate Counsel
Office of Public Counsel
c/o The Florida Legislature
111 West Madison Street, Room 812
Tallahassee, FL 32399-1400
Phone: (850) 488-9330
Email: rehwinkel.charles@leg.state.fl.us
Sayler.erik@leg.state.fl.us

Jon C. Moyle, Jr.
Moyle Law Firm
118 North Gadsden Street
Tallahassee, FL 32301
Phone: (850) 681-3828
Fax: (850) 681-8788
Email: jmoyle@moylelaw.com

James W. Brew
F. Alvin Taylor
Brickfield Burchette Ritts & Stone, PC
1025 Thomas Jefferson St NW
8th FL West Tower
Washington, DC 20007-5201
Phone: (202) 342-0800
Fax: (202) 342-0807
Email: jbrew@bbrslaw.com
ataylor@bbrslaw.com

Robert Scheffel Wright
John T. LaVia
c/o Gardner Law Firm
1300 Thomaswood Dr
Tallahassee, FL 32308
Phone: (850) 385-0070
Facsimile: (850) 385-5416
Email: schef@gbwlegal.com

Mr. Paul Lewis, Jr.
Progress Energy Florida, Inc.
106 East College Avenue, Ste. 800
Tallahassee, FL 32301-7740
Phone: (850) 222-8738
Facsimile: (850) 222-9768
Email: paul.lewisjr@pgnmail.com

From: Rehwinkel, Charles [mailto:REHWINKEL.CHARLES@leg.state.fl.us]
Sent: Tuesday, April 02, 2013 4:45 PM
To: Burnett, John
Cc: Sayler, Erik; Kelly, JR; Jay Brew; Jon Moyle (jmoyle@kagmlaw.com); Scheff Wright (schef@gbwlegal.com) (schef@gbwlegal.com); 'George Cavros' (george@cavros-law.com)
Subject: Suggested OPC Issue 24

John:

As a part of our ongoing issue formulation discussions the OPC proposed what is essentially a potential fact issue that we believe may not be properly worded. Inasmuch as we are attempting to insure that the Commission has the full ability to determine the lawful components of the CR3 Asset, we will continue to work with you and other parties and staff on the proper issue formulation in this area. In the meantime, we will not seek to have the Commission adopt this formulation of the following suggested OPC Issue 24:

OPC 24: What is the amount of CR3 O&M expense currently in rates, if any, and what action should the Commission take at this time with respect to this expense as a result of the DEF decision to retire the CR3 unit?

To this end, the above issue is withdrawn so that we can reformulate a proper factual issue related to O&M expense. Please distribute this email as you see fit.

Thank you and please call with any questions.

Charles J. Rehwinkel