

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Petition for approval to include in base rates the revenue requirement for the CR3 regulatory asset, by Duke Energy Florida, Inc.

DOCKET NO. 150148-EI

In re: Petition for issuance of nuclear asset-recovery financing order, by Duke Energy Florida, Inc. d/b/a Duke Energy.

DOCKET NO. 150171-EI
ORDER NO. PSC-15-0431-PHO-EI
ISSUED: October 12, 2015

PREHEARING ORDER

Pursuant to Notice and in accordance with Rule 28-106.209, Florida Administrative Code (F.A.C.), a Prehearing Conference was held on October 1, 2015, in Tallahassee, Florida, before Commissioner Ronald A. Brisé, as Prehearing Officer.

APPEARANCES:

DIANNE M. TRIPLETT, and JOHN T. BURNETT, ESQUIRES, 299 First Avenue North, St. Petersburg, FL, 33701, and MATTHEW BERNIER, ESQUIRE, 106 East College Avenue, Suite 800, Tallahassee, FL 32301-7740
On behalf of Duke Energy Florida, LLC (DEF).

J.R. KELLY and CHARLES REHWINKEL, ESQUIRES, c/o The Florida Legislature, 111 W. Madison Street, Room 812, Tallahassee, FL 32399-1400
On behalf of Office of Public Counsel (OPC).

JON C. MOYLE, JR. and KAREN A. PUTNAL, ESQUIRES, c/o Moyle Law Firm, P.A. 118 North Gadsden Street, Tallahassee, FL 32301
On behalf of Florida Industrial Power Users Group (FIPUG).

JAMES W. BREW, OWEN J. KOPON, and LAURA A. WYNN, ESQUIRES, Stone Mattheis Xenopoulos & Brew, PC, West Tower, 1025 Thomas Jefferson Street, NW, Washington, D.C. 20007-0800
On behalf of White Springs Agricultural Chemicals, Inc. d/b/a PCS Phosphate – White Springs (PCS Phosphate).

ROBERT SCHEFFEL WRIGHT and JOHN T. LAVIA, III, ESQUIRES, Gardner, Bist, Bowden, Bush, Dee, LaVia & Wright, P.A., 1300 Thomaswood Drive, Tallahassee, FL 32308
On behalf of Florida Retail Federation (FRF).

ROSANNE GERVASI, LEE ENG TAN, KEINO YOUNG, KELLEY CORBARI
and LESLIE AMES, ESQUIRES, Florida Public Service Commission, 2540
Shumard Oak Boulevard, Tallahassee, Florida 32399-0850
On behalf of the Florida Public Service Commission (Staff).

MARY ANNE HELTON, ESQUIRE, Deputy General Counsel, Florida Public
Service Commission, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-
0850
Advisor to the Florida Public Service Commission.

CHARLIE BECK, ESQUIRE, General Counsel, Florida Public Service
Commission, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850
Florida Public Service Commission General Counsel.

PREHEARING ORDER

I. CASE BACKGROUND

On May 22, 2015, DEF filed its Petition for Approval to Include in Base Rates the Revenue Requirement for the Crystal River Unit 3 Regulatory Asset (CR3 Regulatory Asset Petition), along with supporting testimony and exhibits. On July 27, 2015, DEF filed its Petition for Issuance of a Nuclear Asset-Recovery Financing Order, along with supporting testimony and exhibits, requesting that the Commission issue a financing order to permit DEF to securitize certain costs, including the CR3 Regulatory Asset value as outlined in its CR3 Regulatory Asset Petition. The First Order Modifying Order Establishing Procedure, Order No. PSC-15-0340-PCO-EI issued August 21, 2015, scheduled the prehearing conference for October 1, 2015, and an administrative hearing has been set for October 14-16, 2015.

II. CONDUCT OF PROCEEDINGS

Pursuant to Rule 28-106.211, F.A.C., this Prehearing Order is issued to prevent delay and to promote the just, speedy, and inexpensive determination of all aspects of this case.

III. JURISDICTION

This Commission is vested with jurisdiction over the subject matter by the provisions of Chapter 366, Florida Statutes (F.S.). This hearing will be governed by said Chapter and Chapters 25-6, 25-22, and 28-106, F.A.C., as well as any other applicable provisions of law.

IV. PROCEDURE FOR HANDLING CONFIDENTIAL INFORMATION

Information for which proprietary confidential business information status is requested pursuant to Section 366.093, F.S., and Rule 25-22.006, F.A.C., shall be treated by the Commission as confidential. The information shall be exempt from Section 119.07(1), F.S., pending a formal ruling on such request by the Commission or pending return of the information to the person providing the information. If no determination of confidentiality has been made and the information has not been made a part of the evidentiary record in this proceeding, it shall be returned to the person providing the information. If a determination of confidentiality has been made and the information was not entered into the record of this proceeding, it shall be returned to the person providing the information within the time period set forth in Section 366.093, F.S. The Commission may determine that continued possession of the information is necessary for the Commission to conduct its business.

It is the policy of this Commission that all Commission hearings be open to the public at all times. The Commission also recognizes its obligation pursuant to Section 366.093, F.S., to protect proprietary confidential business information from disclosure outside the proceeding. Therefore, any party wishing to use any proprietary confidential business information, as that term is defined in Section 366.093, F.S., at the hearing shall adhere to the following:

- (1) When confidential information is used in the hearing that has not been filed as prefiled testimony or prefiled exhibits, parties must have copies for the Commissioners, necessary staff, and the court reporter, in red envelopes clearly marked with the nature of the contents and with the confidential information highlighted. Any party wishing to examine the confidential material that is not subject to an order granting confidentiality shall be provided a copy in the same fashion as provided to the Commissioners, subject to execution of any appropriate protective agreement with the owner of the material.
- (2) Counsel and witnesses are cautioned to avoid verbalizing confidential information in such a way that would compromise confidentiality. Therefore, confidential information should be presented by written exhibit when reasonably possible.

At the conclusion of that portion of the hearing that involves confidential information, all copies of confidential exhibits shall be returned to the proffering party. If a confidential exhibit has been admitted into evidence, the copy provided to the court reporter shall be retained in the Office of Commission Clerk's confidential files. If such material is admitted into the evidentiary record at hearing and is not otherwise subject to a request for confidential classification filed with the Commission, the source of the information must file a request for confidential classification of the information within 21 days of the conclusion of the hearing, as set forth in Rule 25-22.006(8)(b), F.A.C., if continued confidentiality of the information is to be maintained.

V. PREFILED TESTIMONY AND EXHIBITS; WITNESSES

Testimony of all witnesses to be sponsored by the parties (and Staff) has been prefiled and will be inserted into the record as though read after the witness has taken the stand and affirmed the correctness of the testimony and associated exhibits. All testimony remains subject to timely and appropriate objections. Upon insertion of a witness' testimony, exhibits appended thereto may be marked for identification. Each witness will have the opportunity to orally summarize his or her testimony at the time he or she takes the stand. Summaries of testimony shall be limited to five minutes.

Witnesses are reminded that, on cross-examination, responses to questions calling for a simple yes or no answer shall be so answered first, after which the witness may explain his or her answer. After all parties and Staff have had the opportunity to cross-examine the witness, the exhibit may be moved into the record. All other exhibits may be similarly identified and entered into the record at the appropriate time during the hearing.

The Commission frequently administers the testimonial oath to more than one witness at a time. Therefore, when a witness takes the stand to testify, the attorney calling the witness is directed to ask the witness to affirm whether he or she has been sworn.

The parties shall avoid duplicative or repetitious cross-examination. Further, friendly cross-examination will not be allowed. Cross-examination shall be limited to witnesses whose testimony is adverse to the party desiring to cross-examine. Any party conducting what appears to be a friendly cross-examination of a witness should be prepared to indicate why that witness's direct testimony is adverse to its interests.

VI. ORDER OF WITNESSES

Docket No. 150148-EI

<u>Stipulated Witness</u>	<u>Proffered By</u>	<u>Issues #</u>
<u>Direct</u>		
Marcia Olivier	DEF	1-13
Terry Hobbs	DEF	1-13
Mark Teague	DEF	1-13
Donna Ramas	OPC	2,4,5,6,7
Ronald A. Mavrides	Staff	1

Docket No. 150148-EI

<u>Stipulated Witness</u>	<u>Proffered By</u>	<u>Issues #</u>
William Coston & Jerry Hallenstein	Staff	1

Docket No. 150171-EI

<u>Witness</u>	<u>Proffered By</u>	<u>Issues #</u>
<u>Direct</u>		
Michael Covington	DEF	24, 25, 32, 34, 38, 45, 46
Marcia Olivier	DEF	14, 16-18, 21, 23, 32, 35, 38, 40, 41, 47, 49, 50
Patrick Collins	DEF	25, 26, 32, 34, 36, 38, 44, 45
Bryan Buckler	DEF	15, 19, 20, 22, 26, 28-33, 36-39, 42, 51
Ronald A. Mavrides	Staff	14
William Coston & Jerry Hallenstein	Staff	14
Brian A. Maher ¹	Staff	16, 28, 33, 35, 39
Rebecca Klein	Staff	16, 28, 33, 35, 39

¹ Witness Maher is only available to testify on October 14, 2015.

Docket No. 150171-EI

<u>Witness</u>	<u>Proffered By</u>	<u>Issues #</u>
Hyman Schoenblum ²	Staff	16, 28, 33, 35, 39
Paul Sutherland	Staff	16, 19, 21, 23, 25, 26, 28, 31, 32, 33, 35, 36, 39

Rebuttal

Patrick Collins	DEF	25-26, 36
Bryan Buckler	DEF	26, 28-31, 33, 35-39

VII. BASIC POSITIONS

DEF: A. Nuclear Asset-Recovery Cost Background

Pursuant to PSC Order No. PSC-13-0598-FOF-EI, the Commission approved the 2013 Revised and Restated Stipulation and Settlement Agreement (“RRSSA”) between DEF, the Office of Public Counsel (“OPC”), the Florida Industrial Power Users Group (“FIPUG”), the Florida Retail Federation (“FRF”) and White Springs Agricultural Chemicals, Inc. d/b/a PSC Phosphates (“White Springs”) (collectively, the “Settlement Signatories”). The RRSSA permitted DEF to create the “CR3 Regulatory Asset” to include capital cost amounts and revenue requirements associated with all CR3-related costs. In accordance with the RRSSA, DEF is authorized to increase its base rates by the revenue requirement for the CR3 Regulatory Asset upon the expiration of the Levy Nuclear Project fixed charge of \$3.45. DEF petitioned to terminate this fixed charge on March 2, 2015, effective May 2015, and the Commission approved that request in Order No. PSC-15-0176-TRF-EI on May 6, 2015.

DEF filed a petition for approval to include in base rates the revenue requirement for the CR3 Regulatory Asset on May 22, 2015, in Docket No. 150148-EI. In Docket No. 150148-EI, DEF expressed its intent to petition the Commission for a Financing Order pursuant to House Bill 7109 enacted by the Florida Legislature and codified in relevant part as Section 366.95, Florida Statutes, to issue lower cost “nuclear asset-recovery bonds” to securitize the CR3 Regulatory Asset.

² Witness Schoenblum is not available to testify on October 14, 2015.

As permitted by Section 366.95(2)(c)1.b., Florida Statutes, DEF filed a petition on July 27, 2015, requesting that the Commission issue a financing order to finance DEF's nuclear asset-recovery costs and financing costs. Specifically, DEF requested that the Commission approve the issuance of nuclear asset-recovery bonds in an amount equal to: (a) DEF's nuclear asset-recovery costs consisting of its CR3 Regulatory Asset balance as determined pursuant to Docket No. 150148-EI; plus (b) upfront bond issuance costs; plus (c) carrying charges accruing at 6.0% per annum on the CR3 Regulatory Asset balance from December 31, 2015 through the date of issuance of the nuclear asset-recovery bonds (the "Securitizable Balance").

On September 15, 2015, the Commission approved a stipulation which approved an amendment to the RRSSA executed by the Settlement Signatories and established the CR3 Regulatory Asset value of \$1,283,012,000, through the end of December 2015. This amount includes estimates of the monthly carrying charges net of the estimated \$1.00 per mWh recovery through fuel (RRSSA Paragraph 7.a.) from May through December 2015. The December 31, 2015 actual balance of CR3 Regulatory Asset will include actual carrying charges net of actual recoveries through fuel and will be subject to Commission review for mathematical errors at the time DEF submits its tariff sheets.

B. DEF's Request for a Nuclear Asset-Recovery Financing Order

Under the RRSSA, DEF is permitted to recover the CR3 Regulatory Asset with a full debt return and 70% of the otherwise allowed return on equity. Recovering the CR3 Regulatory Asset through the sale of nuclear asset-recovery bonds, however, is likely to deliver significant, meaningful customer savings when compared to the traditional method of recovery as permitted under the RRSSA.

Pursuant to the provisions of Section 366.95, Florida Statutes, DEF has requested that the Commission (i) approve the recovery of the Securitizable Balance through the issuance of nuclear asset-recovery bonds; (ii) approve the recovery of financing costs, including upfront bond issuance costs incurred in connection with the issuance of the nuclear asset-recovery bonds and ongoing financing costs; (iii) approve the transaction structure of the proposed securitization financing; (iv) approve the creation of the nuclear asset-recovery property, which includes the imposition, billing, charging and collection of non-bypassable nuclear asset-recovery charges to ensure the timely payment of the nuclear asset-recovery bonds and financing costs; and (v) approve the form of tariff schedule to be filed under DEF's tariff.

In order to facilitate review of the matters presented in the Petition and to help ensure that the requisite elements needed to satisfy rating agency conditions and otherwise ensure the benefits associated with the issuance of nuclear asset-recovery bonds, DEF submitted a proposed form of financing order as Exhibit B

to its Petition. DEF requests issuance of a financing order substantially in the form proposed.

C. The Effects of Granting DEF's Petition and Adopting its Draft Financing Order

As explained in DEF's Petition, approving the financing order will allow DEF to significantly reduce customer rates when compared with the traditional method under the RRSSA. In proposing to recover the CR3 Regulatory Asset through the issuance and sale of nuclear asset-recovery bonds, DEF is choosing to forgo a substantial return on equity for the benefit of its customers.

D. Summary Comment on Staff Witness Positions

Commission Staff filed testimony of four witnesses that addressed various aspects of DEF's Petition. These witnesses appear to be in disagreement (or misunderstanding) with a limited number of items contained in DEF's Petition and Proposed Financing Order. Those items are: (1) DEF's interests and motivations for pursuing the issuance of the nuclear asset-recovery bonds; (2) the standard to be used to evaluate the success of the proposed nuclear asset-recovery bond issuance; (3) the role of the Bond Team; (4) the reasonableness of DEF's servicer setup expenses; (5) proposed credit risk disclosure; (6) whether Morgan Stanley should be allowed to serve as an underwriter on the nuclear asset-recovery bond issuance; (7) the importance of a monthly versus daily remittance process; and (8) whether the bonds must be registered as asset-backed securities. DEF's Rebuttal Testimony fully sets forth its position with respect to each of these items and DEF expounds upon some of those positions in the appropriate specific issues below.

E. Nuclear Asset-Recovery Financing Order Cost Recovery Methods and Relief

The nuclear asset-recovery costs described in DEF's Petition, and associated financing costs, would be paid for pursuant to an approximate twenty-year nuclear asset-recovery charge that would be applied on a per kWh basis to all applicable customer classes. In connection with this proceeding, DEF submitted proposed nuclear asset-recovery charge tariff sheets that will closely approximate the final figures, barring significant changes in the terms of an issuance of nuclear asset-recovery bonds. The proposed increase in base rates associated with the RRSSA would not go into effect and instead would be replaced by the nuclear asset-recovery charge.

The advantage of the proposed nuclear asset-recovery financing is that customers would pay a lower per kWh charge over the same period of time relative to the RRSSA.

Conversely, if the Commission determines that recovery of the nuclear asset-recovery costs through the issuance of nuclear asset-recovery bonds is not appropriate or declines to issue a financing order substantially in the form requested by DEF and/or creates conditions on the offering of nuclear asset-recovery bonds that exposes DEF and its stakeholders to unnecessary liability, DEF alternatively requests that a base rate increase pursuant to the RRSSA be implemented beginning six months after the date of the Commission's final order rejecting DEF's request (in the event the financing order is not issued) or the date upon which DEF notifies the Commission that the bonds will not be issued (in the event the financing order is issued), and that carrying costs on the nuclear asset-recovery costs be collected from January 1, 2016, through the capacity cost recovery clause, until such time as the base rate increase goes into effect, consistent with DEF's Petition For Approval to Include in Base Rates the Revenue Requirement for the CR3 Regulatory Asset filed on May 22, 2015, in Docket No. 150148-EI, as modified by the Stipulation approved on September 15, 2015.

For all the reasons set forth in DEF's Petition, Testimony, and Exhibits, DEF requests that the Commission consider and approve the relief requested in the Petition consistent with the 135-day timeline set forth in Section 366.95(2)(c)1.b. in order that nuclear asset-recovery bonds may be issued and that the purposes of the Petition achieved.

OPC: The OPC has stipulated to the amount of the CR3 Regulatory Asset and related issues in the Docket No. 150148-EI portion of this consolidated case as approved by the Commission on September 15, 2015.

For the securitization portion of the consolidated case, the OPC is reviewing the rebuttal testimony by Duke and will participate in the depositions of the Duke witnesses before formulating any final positions (if any) on the remaining issues. The OPC will likely take the general position that the modifications proposed by staff witnesses in the interests of the ratepayers should be adopted absent very compelling evidence that they would not have the intended effect of producing the lowest overall costs to the customers consistent with the provisions of the RRSSA and the intent of the Legislature in adopting Section 366.95, Fla. Stat.

The securitization of the CR3 Regulatory Asset should be addressed in a Financing Order issued by the Commission that is structured primarily to serve and protect the interests of the ratepayers. As filed, the proposed Financing Order does not meet this test. The Financing Order that meets this test and is approved by the Commission should then be executed by the appropriately structured Bond Team in the interest of the ratepayers in a manner that delivers the lowest overall cost consistent with the intent and provisions of the RRSSA and the intent of the legislature in adopting Section 366.95, Fla. Stat.

FIPUG: FIPUG has stipulated to the amount of the CR3 Regulatory Asset. This Commission approved the stipulation on September 15, 2015. Modifications proposed by staff witnesses or otherwise that are in the best interests of the ratepayers should be adopted so that customers attain reasonable bond issuance costs. Additionally, to reduce customers' exposure to interest rate risk, the financing order and attendant bond financing should move forward expeditiously. FIPUG does not support the Commission's adoption of a financing order as proposed by DEF.

PCS

PHOSPHATE: PCS Phosphate, along with the Office of Public Counsel, the Florida Retail Federation, and the Florida Industrial Power Users Group entered into a stipulation with Duke Energy Florida, LLC ("DEF") with respect to the CR3 Regulatory Asset-related issues in this docket ("Stipulation"). DEF filed the Stipulation with the Commission on August 31, 2015 and the Commission approved the Stipulation on September 15, 2015. The Stipulation reduced the value of the CR3 Regulatory Asset that will be included in base rates. The Stipulation also amended the Revised and Restated Stipulation and Settlement Agreement, which was approved in Order NO. PSC-13-0598-FO-EI, to clarify the appropriate recovery period if nuclear asset-recovery bonds are issued.

As for the remaining securitization issues in this matter, PCS opposes adoption of the proposed financing order submitted by DEF. Any financing order adopted by the Commission should seek to minimize rate impacts to customers. PCS Phosphate will consider future discovery prior to taking final positions on the securitization issues in this docket. However, the primary purpose of any financing order that results from this proceeding should be to protect the interest of ratepayers and minimize future costs for which customers may be responsible.

FRF: The FRF has stipulated to the amount of the CR3 Regulatory Asset and related issues in the Docket No. 150148-EI portion of this consolidated case, which stipulations were approved by the Commission on September 15, 2015.

For the securitization portion of the consolidated case, the FRF generally takes the position that the modifications proposed by staff witnesses in the interests of the ratepayers should be adopted absent compelling evidence that they would not have the intended effect of producing the lowest overall costs to the customers consistent with the provisions of the RRSSA and Section 366.95, Florida Statutes.

The securitization of the CR3 Regulatory Asset should be addressed in a Financing Order issued by the Commission that is structured primarily to serve and protect the interests of Duke's customers. As filed, Duke's proposed Financing Order does not meet this test. The Commission should approve a Financing Order that meets this "best interests of customers" test, and the

Commission-approved Financing Order should then be executed by the appropriately structured Bond Team in the interest of customers in a manner that delivers the lowest overall cost consistent with the intent and provisions of the RRSSA.

STAFF: Staff's positions are preliminary and based on materials filed by the parties and on discovery. The preliminary positions are offered to assist the parties in preparing for the hearing. Staff's final positions will be based upon all the evidence in the record and may differ from the preliminary positions stated herein.

VIII. ISSUES AND POSITIONS

CR3 Regulatory Asset Issues

ISSUE 1: Approved stipulation (see Section X.)

ISSUE 2: Approved stipulation (see Section X.)

ISSUE 3: Approved stipulation (see Section X.)

ISSUE 4: Approved stipulation (see Section X.)

ISSUE 5: Approved stipulation (see Section X.)

ISSUE 6: Approved stipulation (see Section X.)

ISSUE 7: Approved stipulation (see Section X.)

ISSUE 8: Approved stipulation (see Section X.)

ISSUE 9: Approved stipulation (see Section X.)

ISSUE 10: Approved stipulation (see Section X.)

ISSUE 11: Approved stipulation (see Section X.)

ISSUE 12: Approved stipulation (see Section X.)

ISSUE 13: Approved stipulation (see Section X.)

Financing Order Issues

LEGAL

ISSUE A: What is the definition of “incremental bond issuance costs” as that term is used in Section 366.95(2)(c)5., Florida Statutes?

DEF: DEF intends to more fully address and develop its position on this legal matter in its post-hearing brief. However, the referenced statutory section is clear that only costs incurred in advance of nuclear asset-recovery bond issuance are subject to potential disallowance. Specifically, such costs would include those costs identified in Mr. Buckler's testimony and specifically page 1 of Exhibit No. __ (BB-1) as "estimated upfront nuclear asset-recovery bond issuance costs." The term "incremental bond issuance cost" does not include ongoing financing costs, interest rates, or pricing of bond issuance."

OPC: The OPC intends to fully address and develop its position on this legal matter in its post-hearing brief. Initially, the OPC takes the position that the referenced statutory section does not expressly limit such costs to only those incurred in advance of nuclear asset-recovery bond issuance as being the ones subject to potential disallowance. The term "incremental bond issuance cost" does not necessarily exclude ongoing financing costs.

FIPUG: FIPUG intends to more fully address and develop its position on this legal matter in its post-hearing brief. However, the referenced statutory section is clear that all imprudently incurred costs incurred in issuing nuclear asset-recovery bond issuance are subject to potential disallowance.

PCS

PHOSPHATE: PCS agrees with the Office of Public Counsel.

FRF: Agree with OPC.

STAFF: As used in Section 366.95(2)(c)5., Florida Statutes, the term “incremental bond issuance costs” means (i) actual bond issuance costs, plus (ii) actual interest and other ongoing financing costs, minus (iii) the lowest overall costs (including bond issuance costs as well as interest and other ongoing financing costs) reasonably consistent with market conditions at the time of the issuance and the terms of the financing order.

LEGAL

ISSUE B: In determining whether some or all actual bond issuance costs should be disallowed pursuant to Section 366.95(2)(c)5., Florida Statutes, what should the Commission take into account?

DEF: DEF intends to more fully address and develop its position on this legal matter in its post-hearing brief. However, the Commission should only take into account

what is permitted by the clear statutory provision, specifically the difference between actual bond issuance costs and the lowest overall costs that were reasonably consistent with market conditions at the time of issuance and the terms of the financing order. Part of this review should include a comparison of the estimated upfront issuance costs as compared to the actual costs, as presented by DEF. The Commission should not consider additional costs in the Section 366.95(2)(c)5 review, such as ongoing financing costs, interest rate pricing, and other pricing provisions of the bond issuance, because that is not authorized by the statute. If the bonds are issued pursuant to the Bond Team structure set forth in DEF's proposed Financing Order, the Commission, through its designated Commissioner, designated Commission Staff, and its adviser, will actively participate in the structuring, marketing, and pricing of the bonds. Accordingly, if the Commission is presented with the final pricing and does not issue a stop order, the Commission and all parties are later precluded from raising any issues with respect to the actual pricing of the bonds.

OPC: The OPC intends to fully address and develop its position on this legal matter in its post-hearing brief. Initially, the OPC takes the position that the Commission should exercise its reasonable and typically broad regulatory discretion and take into account what is in the public interest and not expressly prohibited by Section 366.95. This includes evaluating the difference between actual bond issuance costs and the lowest overall costs that were reasonably consistent with market conditions at the time of issuance and the terms of the financing order. Part of this review should include a comparison of the estimated upfront issuance costs as compared to the actual costs. In determining whether to disallow any bond issuance costs, the Commission should not preclude itself from considering and comparing all bond related costs in the Section 366.95(2)(c)5 review, such as ongoing financing costs, interest rate pricing, and other pricing provisions of the bond issuance, since that analysis is not expressly prohibited by the statute.

FIPUG: FIPUG intends to more fully address and develop its position on this legal matter in its post-hearing brief. It is DEF's burden to prove that actual bond issuance costs were prudently incurred. The Commission should review and take into account all pertinent facts and circumstances related to bond issuance costs for which recovery is sought to determine whether such costs were prudently incurred.

PCS

PHOSPHATE: PCS agrees with the Office of Public Counsel.

FRF: Agree with OPC.

STAFF: In determining whether some or all of actual bond issuance costs should be disallowed pursuant to Section 366.95(2)(c)5., Florida Statutes, the Commission should take into account (i) the incremental issuance costs, plus (ii) actual interest and other ongoing financing costs, minus (iii) the lowest overall costs (including

issuance costs as well as interest and other ongoing financing costs) reasonably consistent with market conditions at the time of the issuance and the terms of the financing order.

ISSUE 14: Proposed stipulation (see Section XI.)

ISSUE 15: Proposed stipulation (see Section XI.)

ISSUE 16: Proposed stipulation (see Section XI.)

ISSUE 17: Proposed stipulation (see Section XI.)

ISSUE 18: Proposed stipulation (see Section XI.)

ISSUE 19: Proposed stipulation (see Section XI.)

ISSUE 20: **What should be the up-front and ongoing fee for the role of servicer throughout the term of the nuclear asset-recovery bonds?**

DEF: Based upon the testimony and rebuttal testimony submitted by Mr. Buckler, DEF believes the up-front financing costs for incremental servicer set-up related expenses is currently estimated to be \$915,000.

To obtain the requisite bankruptcy opinion and support the bankruptcy analysis, counsel expects DEF to represent that the ongoing servicing fee is reasonable and fair consideration as would be obtained under an agreement among unaffiliated entities under otherwise similar circumstances. While the fee can take into account that DEF is simultaneously performing other collection functions, the fee cannot result in DEF subsidizing the activities of the SPE. DEF must be paid an amount that covers its actual costs. DEF, as the initial servicer, should be paid an annual servicing fee in the amount equal to 0.05% of the original principal balance of the nuclear asset-recovery bonds. This rate is at the lower end of the range of typical ongoing servicing fees for other utility securitization transactions and equates to an amount comparable to DEF's current estimate of its aggregate annual incremental servicing costs.

If a third-party successor servicer is required, the servicer fee should be set at an annualized amount not to exceed 0.60% of the original principal balance of the nuclear asset-recovery bonds unless a higher rate is approved by the Commission. (Buckler)

OPC: The modifications proposed by staff witnesses in the interests of the ratepayers should be adopted absent very compelling evidence that they would not have the intended effect of producing the lowest overall costs to the customers consistent with the provisions of the RRSSA and Section 366.95, Fla. Stat.

FIPUG: The modifications proposed by staff witnesses in the interests of the ratepayers should be adopted.

PCS

PHOSPHATE: PCS agrees with the Office of Public Counsel.

FRF: Generally, the FRF agrees with OPC that the modifications proposed by staff witnesses in the interests of Duke's customers should be adopted absent compelling evidence that they would not have the intended effect of producing the lowest overall costs to Duke's customers consistent with the provisions of the RRSSA and Section 366.95, Florida Statutes.

STAFF: No position pending further development of the record.

ISSUE 21: **What amount, if any, of DEF's periodic servicing fee in this transaction should DEF be required to credit back to customers through an adjustment to other rates and charges?**

DEF: As referenced in DEF's proposed financing order (Finding of Fact 63 and Ordering Paragraph 62), DEF proposes that all revenues collected through the servicing fee will be included in DEF's cost of service. The actual expenses incurred throughout the life of the nuclear asset-recovery bonds to support DEF's servicing responsibilities will be included in DEF's cost of service. Therefore, any surplus or deficiency will be refunded or recovered through DEF's base rates in future rate cases. (Olivier)

OPC: The modifications proposed by staff witnesses in the interests of the ratepayers should be adopted absent very compelling evidence that they would not have the intended effect of producing the lowest overall costs to the customers consistent with the provisions of the RRSSA and Section 366.95, Fla. Stat.

FIPUG: The modifications proposed by staff witnesses in the interests of the ratepayers should be adopted.

PCS

PHOSPHATE: PCS agrees with the Office of Public Counsel.

FRF: The FRF does not take a final position at this time pending review of rebuttal testimony and discovery. Generally, the FRF agrees with OPC that the modifications proposed by staff witnesses in the interests of Duke's customers should be adopted absent compelling evidence that they would not have the intended effect of producing the lowest overall costs to Duke's customers consistent with the provisions of the RRSSA and Section 366.95, Florida Statutes.

STAFF: DEF should be required to credit back to customers all periodic servicing fees in excess of DEF's incremental cost of providing periodic services. The amount will be determined pending further development of the record. (Sutherland)

ISSUE 22: What should be the ongoing fee for the role of the administrator throughout the term of the nuclear asset-recovery bonds?

DEF: To obtain the requisite bankruptcy opinion and support the bankruptcy analysis, counsel expects DEF to represent that the ongoing administration fee is reasonable and fair consideration as would be obtained under an agreement among unaffiliated entities under otherwise similar circumstances. DEF must be paid an amount that covers its actual costs. DEF, as administrator, should be paid an annual fee of between \$50,000 and \$100,000. This range is consistent with administration fees for other utility securitization transaction and is comparable to DEF's current estimate of its aggregate annual incremental administration costs. (Buckler)

OPC: The modifications proposed by staff witnesses in the interests of the ratepayers should be adopted absent very compelling evidence that they would not have the intended effect of producing the lowest overall costs to the customers consistent with the provisions of the RRSSA and Section 366.95, Fla. Stat.

FIPUG: The modifications proposed by staff witnesses in the interests of the ratepayers should be adopted.

PCS

PHOSPHATE: PCS agrees with the Office of Public Counsel.

FRF: The FRF does not take a final position at this time pending review of rebuttal testimony and discovery. Generally, the FRF agrees with OPC that the modifications proposed by staff witnesses in the interests of Duke's customers should be adopted absent compelling evidence that they would not have the intended effect of producing the lowest overall costs to Duke's customers consistent with the provisions of the RRSSA and Section 366.95, Florida Statutes.

STAFF: No position pending further development of the record.

ISSUE 23: What amount, if any, of DEF's periodic administration fee in this transaction should DEF be required to credit back to customers through an adjustment to other rates and charges?

DEF: As referenced in DEF's proposed financing order (Finding of Fact 63 and Ordering Paragraph 62), DEF proposes that all revenues collected through the administration fee under the Administration Agreement will be included in DEF's cost of service. The actual expenses incurred throughout the life of the nuclear asset-recovery bonds to support DEF's function as administrator for the SPE will be included in DEF's cost of service. Therefore, any surplus or deficiency will be refunded or recovered through DEF's base rates in future rate cases. (Olivier)

OPC: The modifications proposed by staff witnesses in the interests of the ratepayers should be adopted absent very compelling evidence that they would not have the intended effect of producing the lowest overall costs to the customers consistent with the provisions of the RRSSA and Section 366.95, Fla. Stat.

FIPUG: The modifications proposed by staff witnesses in the interests of the ratepayers should be adopted.

PCS

PHOSPHATE: PCS agrees with the Office of Public Counsel.

FRF: Generally, the FRF agrees with OPC that the modifications proposed by staff witnesses in the interests of Duke's customers should be adopted absent compelling evidence that they would not have the intended effect of producing the lowest overall costs to Duke's customers consistent with the provisions of the RRSSA and Section 366.95, Florida Statutes.

STAFF: The amount, if any, of DEF's periodic administration fee in this transaction that DEF should be required to credit back to customers through an adjustment to other rates and charges is the amount of periodic administrative fees in excess of DEF's incremental cost of providing periodic administrative services. The amount will be determined pending further development of the record. (Sutherland)

ISSUE 24: **How frequently should DEF in its role as servicer be required to remit funds collected from customers to the SPE?**

DEF: DEF proposes to remit funds collected from customers to the SPE either on a daily basis based on estimated daily collections using a weighted average balance of days outstanding or on a monthly basis if certain conditions can be satisfied. These conditions have yet to be determined and will be driven by rating agency requirements to achieve and maintain the targeted "AAA" rating on the bonds. (Covington)

OPC: The OPC tentatively agrees with Staff witness Sutherland on this issue. Furthermore, the OPC takes the position that the modifications proposed by staff witnesses in the interests of the ratepayers should be adopted absent very compelling evidence that they would not have the intended effect of producing the lowest overall costs to the customers consistent with the provisions of the RRSSA and Section 366.95, Fla. Stat.

FIPUG: The modifications proposed by staff witnesses in the interests of the ratepayers should be adopted.

PCS

PHOSPHATE: PCS agrees with the Office of Public Counsel.

FRF: The FRF tentatively agrees with Staff's witness Sutherland on this issue. Generally, the FRF agrees with OPC that the modifications proposed by staff witnesses in the interests of Duke's customers should be adopted absent compelling evidence that they would not have the intended effect of producing the lowest overall costs to Duke's customers consistent with the provisions of the RRSSA and Section 366.95, Florida Statutes.

STAFF: No position pending further development of the record.

ISSUE 25: **If remittances are not daily, should DEF be required periodically to remit actual earnings on collections pending remittance?**

DEF: No. DEF does not believe it would be possible to accurately attribute actual cash investment earnings of DEF to nuclear asset-recovery charge collections. Instead, DEF proposes to allocate investment earnings to such collections based on the average of the beginning and ending Tier-1 commercial paper rate (i.e., 30-day Federal Reserve "AA" Industrial Commercial Paper Composite Rate) for each month. This method is consistent with the process used by DEF when allocating interest to over and under-collections on DEF's cost recovery clauses. (Collins, Covington)

OPC: The OPC tentatively agrees with Staff witness Sutherland on this issue. Furthermore, the OPC takes the position that the modifications proposed by staff witnesses in the interests of the ratepayers should be adopted absent very compelling evidence that they would not have the intended effect of producing the lowest overall costs to the customers consistent with the provisions of the RRSSA and Section 366.95, Fla. Stat.

FIPUG: The remittances should be made on a daily basis.

PCS

PHOSPHATE: PCS agrees with the Office of Public Counsel.

FRF: The FRF tentatively agrees with Staff's witness Sutherland on this issue. Generally, the FRF agrees with OPC that the modifications proposed by staff witnesses in the interests of Duke's customers should be adopted absent compelling evidence that they would not have the intended effect of producing the lowest overall costs to Duke's customers consistent with the provisions of the RRSSA and Section 366.95, Florida Statutes.

STAFF: Yes. If remittances are not daily, DEF should be required periodically to remit actual earnings on collections pending remittance. (Sutherland)

ISSUE 26: Is DEF's proposed process for determining whether the upfront bond issuance costs satisfy the statutory standard of Section 366.95(2)(c)5., Florida Statutes, reasonable and should it be approved?

DEF: Yes the proposed process is reasonable and should be approved. In accordance with Section 366.95(2)(c)5., Florida Statutes, within 120 days after the issuance of the nuclear asset-recovery bonds, DEF will file supporting information on the actual upfront bond issuance costs. The Commission shall review, on a reasonably comparable basis, such costs to determine compliance with Section 366.95(2)(c)5., Florida Statutes. DEF will be presumed to have satisfied the statutory standard with respect to any upfront bond issuance costs that are incurred under contract following a request for proposal process involving the Bond Team or that are substantiated by documentation and fall within the estimates submitted to the Commission Staff as part of the Issuance Advice Letter procedure as described in DEF's proposed financing order. Furthermore, to the extent actual upfront bond issuance costs are different than those costs submitted to the Commission in the Issuance Advice Letter, there will be a reconciliation of such costs with appropriate credits to either DEF or customers as the case may be. Contrary to the testimony of Staff's witnesses, DEF's proposed process will result in the filing of full support for all its upfront costs, including the servicer setup expenses. (Buckler, Collins)

OPC: The modifications proposed by staff witnesses in the interests of the ratepayers should be adopted absent very compelling evidence that they would not have the intended effect of producing the lowest overall costs to the customers consistent with the provisions of the RRSSA and Section 366.95, Fla. Stat.

FIPUG: The modifications proposed by staff witnesses in the interests of the ratepayers should be adopted.

PCS

PHOSPHATE: PCS agrees with the Office of Public Counsel.

FRF: Generally, the FRF agrees with OPC that the modifications proposed by staff witnesses in the interests of Duke's customers should be adopted absent compelling evidence that they would not have the intended effect of producing the lowest overall costs to Duke's customers consistent with the provisions of the RRSSA and Section 366.95, Florida Statutes.

STAFF: No. The Commission should not predetermine that upfront bond issuance costs within a range of estimates meets the statutory standard of Section 366.95(2)(c)5, Florida Statutes. Accordingly, DEF's proposed process should not be approved. (Sutherland)

ISSUE 27: Issue dropped.

ISSUE 28: What additional conditions, if any, should be made in the financing order that are authorized by Section 366.95(2)(c)2.i.?

DEF: None. In particular, the Commission should not impose a “lowest overall cost” standard to this transaction. Imposing such a standard could have the negative impact of prolonging or jeopardizing the transaction in search for the “perfect” transaction, for which a subjective assessment would be made in an area that is of great complexity. In its proposed financing order, DEF has proposed that appropriate standards for this transaction are the standards approved by the Florida Legislature and found in the Florida Statute.

Importantly, DEF’s proposed Financing Order affords the Commission tremendous oversight over the bond issuance, including Commission Staff and its Advisors’ involvement, in a joint-decision making fashion, on substantially all key decisions related to the structuring, marketing and pricing of the bonds, an Issuance Advice Letter process whereby DEF will outline the expected structure and pricing of the bonds two weeks in advance of pricing, the ability of one or more Commissioners to join the Commission staff and Commission Staff advisor in the oversight and review of the process over those last approximate two weeks, and the ability after pricing, for up to three days, for the Commission to “cancel” the pricing and issuance of the bonds if the Commission is not satisfied with the outcome.

Furthermore, DEF will demonstrate to this Commission that its efforts and the results of the transaction are reasonable and prudent and serve the general public interest, consistent with Section 366.95(2)(c)1.b., Florida Statutes. (Buckler)

OPC: The modifications proposed by staff witnesses in the interests of the ratepayers should be adopted absent very compelling evidence that they would not have the intended effect of producing the lowest overall costs to the customers consistent with the provisions of the RRSSA and Section 366.95, Fla. Stat.

FIPUG: Appropriate conditions that protect the ratepayers’ financial interests should be made part of the financing order. The modifications proposed by staff witnesses in the interests of the ratepayers should be adopted.

PCS

PHOSPHATE: PCS agrees with the Office of Public Counsel.

FRF: Generally, the FRF agrees with OPC that the modifications proposed by staff witnesses in the interests of Duke’s customers should be adopted absent compelling evidence that they would not have the intended effect of producing the lowest overall costs to Duke’s customers consistent with the provisions of the RRSSA and Section 366.95, Florida Statutes.

STAFF: The Commission should institute a lowest cost standard in the financing order to ensure that the securitization achieves the lowest overall cost of funds at the time of pricing under prevailing market conditions. Also, the Commission should implement the Best Practices enunciated by staff witness Sutherland in his direct testimony. Finally, the Commission should specify that it does not consider the Nuclear Asset-Recovery Bonds to be Asset-Backed Securities (ABS) but rather considers them to be utility securitization bonds that are superior to and less risky than ABS. (Sutherland, Schoenblum, Maher, Klein)

ISSUE 29: Proposed stipulation (see Section XI.)

ISSUE 30: Proposed stipulation (see Section XI.)

ISSUE 31: **Is DEF's proposed pre-issuance review process reasonable and should it be approved?**

DEF: Yes. DEF believes its pre-issuance review process whereby the Commission Staff and its financial advisor will have a very prominent and equal role in most aspects of the nuclear asset-recovery bond issuance is reasonable and should be approved. However, with respect to those matters in which DEF and the SPE will be exposed to federal securities law and contractual law liability, DEF must have direct control over all public disclosures, including SEC filings, and must have final approval authority over the form and substance of communications with investors. Given this federal securities law liability, the Bond Team should not be involved with the selection of DEF's counsel. In addition, contrary to testimony from Staff's witnesses, at this time, DEF cannot be required to include the conclusory statement that credit risk has been "effectively eliminated" in its registration statement. Rather, DEF, in consultation with the Bond Team, must wait until all available information is assessed, including the results of the rating agencies process, to determine whether such a conclusory statement is appropriate, as such a statement may expose DEF to unnecessary liability. That being said, if the Commission were to make that finding or come to that conclusion, DEF would consider including a statement in the registration statement provided it was clearly identified in each instance that it was a finding and conclusion of the Commission and not DEF. DEF is also willing to further consider, with the Bond Team after the issuance of the Financing Order, whether DEF can include such a statement in its registration statement. (Buckler)

OPC: The modifications proposed by staff witnesses in the interests of the ratepayers should be adopted absent very compelling evidence that they would not have the intended effect of producing the lowest overall costs to the customers consistent with the provisions of the RRSSA and Section 366.95, Fla. Stat.

FIPUG: Bonds should be issued expeditiously to avoid interest rate risk; DEF's pre-issuance review process should be approved as reasonable to the extent that it

does not result in material delays to the issuance of the bonds. The modifications proposed by staff witnesses in the interests of the ratepayers should be adopted.

PCS

PHOSPHATE: PCS agrees with the Office of Public Counsel.

FRF: Generally, the FRF agrees with OPC that the modifications proposed by staff witnesses in the interests of Duke's customers should be adopted absent compelling evidence that they would not have the intended effect of producing the lowest overall costs to Duke's customers consistent with the provisions of the RRSSA and Section 366.95, Florida Statutes.

STAFF: No. DEF's proposed pre-issuance review process is not reasonable and should not be approved. (Sutherland)

ISSUE 32: **Should the Financing Documents be approved in substantially the form proposed by DEF, subject to modifications as addressed in the draft form of the financing order?**

DEF: Yes. (Buckler, Collins, Covington, Olivier)

OPC: The modifications proposed by staff witnesses in the interests of the ratepayers should be adopted absent very compelling evidence that they would not have the intended effect of producing the lowest overall costs to the customers consistent with the provisions of the RRSSA and Section 366.95, Fla. Stat.

FIPUG: No. The modifications proposed by staff witnesses in the interests of the ratepayers should be adopted.

PCS

PHOSPHATE: PCS agrees with the Office of Public Counsel.

FRF: Generally, the FRF agrees with OPC that the modifications proposed by staff witnesses in the interests of Duke's customers should be adopted absent compelling evidence that they would not have the intended effect of producing the lowest overall costs to Duke's customers consistent with the provisions of the RRSSA and Section 366.95, Florida Statutes.

STAFF: No. Although it is reasonable to approve the general concept that the Financing Documents will be necessary elements of the proposed transaction, the specific terms, conditions, covenants, warranties, representations, and specific language contained in the Documents will be impacted by the Commission's decisions on other issues and must be reviewed in consideration of the financing order approved by the Commission. (Sutherland)

ISSUE 33: Is DEF's proposed Issuance Advice Letter process reasonable and consistent with the statutory financing cost objective contained in Section 366.95(2)(c)2.b., Florida Statutes?

DEF: Yes. The process proposed in DEF's draft financing order, including the Issuance Advice Letter process, is reasonable and consistent with the statutory financing cost objective contained in Section 366.95(2)(c)2.b., Florida Statutes. The Bond Team will be actively involved in the structuring, marketing and pricing of the nuclear asset-recovery bonds, so the Commission will be provided with information in real time about the transaction. Furthermore, the Commission will have an opportunity to review a draft of the proposed Issuance Advice Letter in advance of pricing the transaction. (Buckler)

OPC: The OPC tentatively agrees with the position contained in the testimony of Staff witness Schoenblum. Furthermore, the OPC takes the position that the modifications proposed by staff witnesses in the interests of the ratepayers should be adopted absent very compelling evidence that they would not have the intended effect of producing the lowest overall costs to the customers consistent with the provisions of the RRSSA and Section 366.95, Fla. Stat.

FIPUG: No. The modifications proposed by staff witnesses in the interests of the ratepayers should be adopted.

PCS

PHOSPHATE: PCS agrees with the Office of Public Counsel.

FRF: The FRF tentatively agrees with Staff's witness Schoenblum on this issue. Generally, the FRF agrees with OPC that the modifications proposed by staff witnesses in the interests of Duke's customers should be adopted absent compelling evidence that they would not have the intended effect of producing the lowest overall costs to Duke's customers consistent with the provisions of the RRSSA and Section 366.95, Florida Statutes.

STAFF: Yes. DEF's proposed Issuance Advice Letter process is reasonable and consistent with the statutory financing cost objective contained in Section 366.95(2)(c)2.b., Florida Statutes. However, the Commission should institute a lowest cost standard in the financing order to ensure that the securitization achieves the lowest overall cost of funds at the time of pricing under prevailing market conditions. Also, the Commission should implement the Best Practices enunciated by staff witness Sutherland in his direct testimony. Finally, the Commission should specify that it does not consider the Nuclear Asset-Recovery Bonds to be Asset-Backed Securities (ABS) but rather considers them to be utility securitization bonds that are superior to and less risky than ABS. (Sutherland, Schoenblum, Maher, Klein)

ISSUE 34: Proposed stipulation (see Section XI.)

ISSUE 35: Is DEF's proposed process for determining whether the structure, plan of marketing, expected pricing and financing costs of the nuclear asset-recovery bonds have a significant likelihood of resulting in lower overall costs or would avoid or significantly mitigate rate impacts to customers as compared with the traditional method of financing and recovering nuclear asset-recovery costs reasonable and should it be approved?

DEF: Yes. DEF's testimony and exhibits support the conclusion that the process for determining whether the structure, plan of marketing, expected pricing and financing costs of the nuclear asset-recovery bonds have a significant likelihood of resulting in lower overall costs or would avoid or significantly mitigate rate impacts to customers as compared with the traditional method of financing and recovering nuclear asset-recovery costs pursuant to Section 366.95(2)(c)2.b., Florida Statutes, is reasonable and should be approved. (Olivier, Buckler)

OPC: The modifications proposed by staff witnesses in the interests of the ratepayers should be adopted absent very compelling evidence that they would not have the intended effect of producing the lowest overall costs to the customers consistent with the provisions of the RRSSA and Section 366.95, Fla. Stat.

FIPUG: Bonds should be issued expeditiously to avoid interest rate risk; to the extent that DEF's proposed process will not materially delay the issuance of the bonds, it should be pursued. The modifications proposed by staff witnesses in the interests of the ratepayers should be adopted.

PCS

PHOSPHATE: PCS agrees with the Office of Public Counsel.

FRF: Generally, the FRF agrees with OPC that the modifications proposed by staff witnesses in the interests of Duke's customers should be adopted absent compelling evidence that they would not have the intended effect of producing the lowest overall costs to Duke's customers consistent with the provisions of the RRSSA and Section 366.95, Florida Statutes.

STAFF: Yes. DEF's proposed process for determining whether the structure, plan of marketing, expected pricing and financing costs of the nuclear asset-recovery bonds have a significant likelihood of resulting in lower overall costs or would avoid or significantly mitigate rate impacts to customers as compared with the traditional method of financing and recovering nuclear asset-recovery costs. However, the Commission should institute a lowest cost standard in the financing order to ensure that the securitization achieves the lowest overall cost of funds at the time of pricing under prevailing market conditions. Also, the Commission should implement the Best Practices enunciated by staff witness Sutherland in his direct testimony. Finally, the Commission should specify that it does not consider the Nuclear Asset-Recovery Bonds to be Asset-Backed Securities (ABS) but

rather considers them to be utility securitization bonds that are superior to and less risky than ABS. (Sutherland, Schoenblum, Maher, Klein)

ISSUE 36: **Is the degree of flexibility afforded to DEF in establishing the terms and conditions of the nuclear asset-recovery bonds as described in the proposed form of financing order, reasonable and consistent with Section 366.95(2)(c)2.f., Florida Statutes?**

DEF: Yes. (Buckler, Collins)

OPC: The modifications proposed by staff witnesses in the interests of the ratepayers should be adopted absent very compelling evidence that they would not have the intended effect of producing the lowest overall costs to the customers consistent with the provisions of the RRSSA and Section 366.95, Fla. Stat.

FIPUG: The modifications proposed by staff witnesses in the interests of the ratepayers should be adopted.

PCS

PHOSPHATE: PCS agrees with the Office of Public Counsel.

FRF: Generally, the FRF agrees with OPC that the modifications proposed by staff witnesses in the interests of Duke's customers should be adopted absent compelling evidence that they would not have the intended effect of producing the lowest overall costs to Duke's customers consistent with the provisions of the RRSSA and Section 366.95, Florida Statutes.

STAFF: Yes. The degree of flexibility afforded to DEF in establishing the terms and conditions of the nuclear asset-recovery bonds as described in the proposed form of financing order is reasonable and consistent with Section 366.95(2)(c)2.f., Florida Statutes. However, DEF and the Commission should work together in a collaborative process to allow for flexibility for the Bond Team to ensure that the lowest overall costs consistent with prevailing market conditions and the terms of the financing order are achieved. (Sutherland)

ISSUE 37: Proposed stipulation (see Section XI.)

ISSUE 38: Proposed stipulation (see Section XI.)

ISSUE 39: **If the Commission votes to issue a financing order, what post-financing order regulatory oversight is appropriate and how should that oversight be implemented?**

DEF: DEF acknowledged in its testimony that the Commission staff and its financial advisor should be heavily involved in all aspects of the structuring, marketing and pricing of the nuclear asset-recovery bonds, but DEF must retain the authority to make final decisions on matters that subject it to securities law and other litigation

risk. DEF welcomes and encourages all Bond Team members to actively participate in the design of the marketing materials for the transactions as well as in the development and implementation of the marketing and sales plan for the bonds. DEF believes all Bond Team members, excluding DEF's structuring advisor, should also have equal rights on the hiring decisions for the underwriters. In addition the Bond Team's involvement in the structuring, marketing and pricing of the nuclear asset-recovery bonds, the Commission will also be able to fully review the pricing of the bonds through the Issuance Advice Letter process as described in DEF's proposed financing order. (Buckler)

OPC: The modifications proposed by staff witnesses in the interests of the ratepayers should be adopted absent very compelling evidence that they would not have the intended effect of producing the lowest overall costs to the customers consistent with the provisions of the RRSSA and Section 366.95, Fla. Stat.

FIPUG: Oversight to ensure that consumers' financial interests are protected should be pursued. Such review may include, but not be limited to, periodic audits.

PCS

PHOSPHATE: PCS agrees with the Office of Public Counsel.

FRF: Generally, the FRF agrees with OPC that the modifications proposed by staff witnesses in the interests of Duke's customers should be adopted absent compelling evidence that they would not have the intended effect of producing the lowest overall costs to Duke's customers consistent with the provisions of the RRSSA and Section 366.95, Florida Statutes.

STAFF: The Commission, its staff, its outside counsel, and its financial advisor, along with DEF, its financial advisor, and its outside counsel should work in a collaborative effort to ensure the structuring, marketing, and pricing of the nuclear asset-recovery bonds will result in the lowest cost consistent with prevailing market conditions and the terms of the financing order. (Sutherland, Schoenblum, Maher, Klein)

ISSUE 40: Proposed stipulation (see Section XI.)

ISSUE 41: Proposed stipulation (see Section XI.)

ISSUE 42: Proposed stipulation (see Section XI.)

ISSUE 43: Issue dropped.

ISSUE 44: Proposed stipulation (see Section XI.)

ISSUE 45: Proposed stipulation (see Section XI.)

ISSUE 46: Proposed stipulation (see Section XI.)

ISSUE 47: Proposed stipulation (see Section XI.)

ISSUE 48: Issue dropped.

ISSUE 49: Proposed stipulation (see Section XI.)

ISSUE 50: Proposed stipulation (see Section XI.)

ISSUE 51: Proposed stipulation (see Section XI.)

ISSUE 52: Proposed stipulation (see Section XI.)

IX. EXHIBIT LIST

Docket No. 150148-EI

<u>Witness</u>	<u>Proffered By</u>		<u>Description</u>
			<u>Direct</u>
Marcia Olivier	DEF	MO-1	RRSSA with Exhibits 10 and 11
Marcia Olivier	DEF	MO-2	RRSSA Exhibit 10 Template Populated
Marcia Olivier	DEF	MO-3	RRSSA Exhibit 11 Template Populated
Marcia Olivier	DEF	MO-4	Rate Schedules
Marcia Olivier	DEF	MO-5	Estimated Nuclear Fuel Proceeds (Confidential)
Marcia Olivier	DEF	MO-6	CCR Nuclear Fuel Illustrative Impact (Confidential)
Terry Hobbs	DEF	TH-1	Decommissioning transition organization ("DTO") organizational chart
Terry Hobbs	DEF	TH-2	New SAFSTOR organization chart

Docket No. 150148-EI

<u>Witness</u>	<u>Proffered By</u>		<u>Description</u>
Terry Hobbs	DEF	TH-3	A list of the License Amendment Requests (“LARs”) completed and submitted to the NRC
Terry Hobbs	DEF	TH-4	A chart showing staffing reductions since Feb. 2013
Terry Hobbs	DEF	TH-5	Exhibit 10 to the RRSSA
Terry Hobbs	DEF	TH-6	A list of projects that make up “Other CWIP”
Mark Teague	DEF	MT-1	CR3 Administrative Procedure, AI-9010, conduct of CR3 Investment Recovery, Revision 1
Mark Teague	DEF	MT-2	CR3 Investment Recovery Project, Project Execution Plan, Revision 0
Mark Teague	DEF	MT-3	Investment Recovery Guidance Document IRGD-001, Sales Track Guidance and Documentation Package Development
Mark Teague	DEF	MT-4	Integrated Change Form for the retention of an auction company used to sell CR3 plant assets (Confidential)
Donna Ramas	OPC	DMR-1	Qualifications of Donna Ramas
Donna Ramas	OPC	DMR-2	Adjustments to CR3 Regulatory Assets
Ronald A. Mavrides	Staff	RAM-1	Auditor’s Report – Review of CR3 Regulatory Asset
William Coston & Jerry Hallenstein	Staff	CH-1	Review of Project Management Internal Controls

Docket No. 150171-EI

<u>Witness</u>	<u>Proffered By</u>		<u>Description</u>
<u>Direct</u>			
Bryan Buckler	DEF	BB-1	Estimated up-front bond issuance and ongoing financing costs for nuclear asset-recovery bonds
Bryan Buckler & Patrick Collins	DEF	BB-2a	Form of Nuclear Asset-Recovery Property Purchase and Sale Agreement
Bryan Buckler & Patrick Collins	DEF	BB-2b	Form of Nuclear Asset-Recovery Property Servicing Agreement
Bryan Buckler & Patrick Collins	DEF	BB-2c	Form of Indenture
Bryan Buckler & Patrick Collins	DEF	BB-2d	Form of Administration Agreement
Bryan Buckler & Patrick Collins	DEF	BB-2e	Form of Amended and Restated LLC Agreement
Michael Covington	DEF	MC-1	Nuclear Asset-Recovery Charge True-Up Mechanism Form
Michael Covington	DEF	MC-2	Accounting Entries to Record Nuclear Asset-Recovery Financing
Marcia Olivier	DEF	MO-1A	Proposed Nuclear Asset-Recovery Charge by Rate Class
Marcia Olivier	DEF	MO-2A	CR3 Regulatory Asset Annual Revenue Requirement – Traditional Recovery Method
Marcia Olivier	DEF	MO-2B	CR3 Regulatory Asset Annual Revenue Requirement – Nuclear-Asset Recovery Charge Method
Marcia Olivier	DEF	MO-3A	Traditional Recovery Method Base Rate Increase by Rate Schedule

Docket No. 150171-EI

<u>Witness</u>	<u>Proffered By</u>		<u>Description</u>
Marcia Olivier	DEF	MO-4A	Comparison between Proposed Nuclear Asset- Recovery Charge and Traditional Recovery Method by Rate Schedule
Marcia Olivier	DEF	MO-5A	Sample Bill Calculations
Marcia Olivier	DEF	MO-6A	Proposed Tariff Sheets
Patrick Collins	DEF	PC-1	Preliminary bond structure and associated cashflows
Patrick Collins	DEF	PC-2	A list of completed utility securitizations since 1997
Brian A. Maher	Staff	BAM-1	Speech by SEC Staff: Fiduciary Duty: Return to First Principles
Brian A. Maher	Staff	BAM-2	SIFMA Definition of Fiduciary Relationship
Brian A. Maher	Staff	BAM-3	Form of Underwriting Agreement
Brian A. Maher	Staff	BAM-4	Saber Partners Survey
Brian A. Maher	Staff	BAM-5	Excerpts from Registration Statements
Brian A. Maher	Staff	BAM-6	Credit risk disclosure transmittal from Hunton & Williams and Thelen Reid and Priest, counsel to Oncor, to Saber Partners, LLC
Rebecca Klein	Staff	RK-1	Texas Issuance Advice Letters
Hyman Schoenblum	Staff	HS-1	Citigroup Study 2003

Docket No. 150171-EI

<u>Witness</u>	<u>Proffered By</u>		<u>Description</u>
Hyman Schoenblum	Staff	HS-2	Wisconsin Study of Saber
Paul Sutherland	Staff	PS-1	Glossary
Paul Sutherland	Staff	PS-1a	Securitized Utility Property Not A Financial Asset
Paul Sutherland	Staff	PS-1b	Accountants Handbook
Paul Sutherland	Staff	PS-1c	FASB ASC
Paul Sutherland	Staff	PS-2	Organization Chart
Paul Sutherland	Staff	PS-3	New Issue Pricing Spreads, 4-6 Year Average Life
Paul Sutherland	Staff	PS-4	New Issue Pricing Spreads, 9-10 Year Average Life
Paul Sutherland	Staff	PS-5	Excerpt from Independent Advisor Report
Paul Sutherland	Staff	PS-5a	Merrill Lynch E-Mail
Paul Sutherland	Staff	PS-6	AAA Utility Securitization Spreads to AAA Credit Cards
Paul Sutherland	Staff	PS-6a	Wells Fargo Research Report
Paul Sutherland	Staff	PS-7	Centerpoint 1/11/2012 Securitization
Paul Sutherland	Staff	PS-9	CEHE Securitization
Paul Sutherland	Staff	PS-10	AAA Rated Comparable Pricing

Docket No. 150171-EI

<u>Witness</u>	<u>Proffered By</u>		<u>Description</u>
Paul Sutherland	Staff	PS-11	Saber Partners Report – Analysis of Ohio Power Pricing
Paul Sutherland	Staff	PS-12	Servicer Set-Up Costs
Paul Sutherland	Staff	PS-13	Utility Securitization Spreads to Credit Cards
Paul Sutherland	Staff	PS-14	Investment Dealers Digest Article
Paul Sutherland	Staff	PS-15	Orders Crediting Costs Above Incremental Costs to Ratepayer
Paul Sutherland	Staff	PS-15a	Article Re: LA Public Facilities Authority
Paul Sutherland	Staff	PS-16	Ordering Paragraphs
Paul Sutherland	Staff	PS-17	Investor Participation Profile
Paul Sutherland	Staff	PS-17a	S&P Ratings Digest of July 8, 2009
Paul Sutherland	Staff	PS-18	Principal Amount of Utility Securitization Financing Issued by Year
Paul Sutherland	Staff	PS-19	10-Year AAA Stranded Assets Spreads – Citigroup vs. J.P. Morgan
Paul Sutherland	Staff	PS-19a	AEP Sidley MS Email
Paul Sutherland	Staff	PS-20	Utility Securitization Transactions

Rebuttal

Bryan Buckler	DEF	BB-3	Excerpt of Ohio Power Company Financing Order
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Docket No. 150171-EI

<u>Witness</u>	<u>Proffered By</u>		<u>Description</u>
Bryan Buckler	DEF	BB-4	Section 4928.232(D)(2) of the Ohio statute
Bryan Buckler	DEF	BB-5	Ohio Power Company Issuance Advice Letter
Bryan Buckler	DEF	BB-6	Utility's securitization process withdrawal letter to the Public Service Commission of Wisconsin
Bryan Buckler	DEF	BB-7	Composite exhibit of interrogatory responses
Patrick Collins	DEF	PC-3	Composite exhibit of interrogatory responses

Parties and Staff reserve the right to identify additional exhibits for the purpose of cross-examination.

X. APPROVED STIPULATIONS

The following stipulations were approved at the September 15, 2015 agenda conference:

ISSUE 1: DEF has provided adequate internal controls and management oversight of its CR3 investment recovery procedure and plan. Please note that DEF and Staff are in agreement for Issue 1. The Intervenor's take "No Position" on this issue. DEF stipulates to the entry of Staff's witnesses' testimony (regarding the CR3 Regulatory Asset) and exhibits and further agrees to Staff's CR3 Regulatory Asset witnesses' excusal from the October hearing.

ISSUE 2: DEF minimized the current and future costs of the CR3 Regulatory Asset and used reasonable and prudent efforts to curtail avoidable costs or to sell or otherwise salvage assets that would otherwise be included in the CR3 Regulatory Asset, as required by the Revised and Restated Stipulation and Settlement Agreement (RRSSA). DEF fully complied with its obligations under the RRSSA.

ISSUE 3: Recovery of the carrying cost through the fuel clause pursuant to Paragraph 7.a. of the RRSSA should terminate with the last billing cycle for December 2015. DEF will not implement the \$1.50 per megawatt hour rate increase for 2016.

ISSUE 4: DEF has properly categorized and recorded costs associated with the CR3 Regulatory Asset as contemplated by the RRSSA.

- ISSUE 5:** DEF appropriately applied the accelerated recovery of the carrying charge collected through the Fuel Adjustment Clause to the CR3 Regulatory Asset.
- ISSUE 6:** The appropriate projected amount of the CR3 Regulatory Asset at December 31, 2015 is \$1,283,012,000. This amount reflects the original amount projected in DEF's petition of \$1,298,012,000 reduced by the adjustment of \$15 million referenced in the parties' stipulation.
- ISSUE 7:** DEF has calculated the annual revenue requirement for the CR3 Regulatory Asset consistent with the requirements of the RRSSA.
- ISSUE 8:** The appropriate amortization period to amortize the CR3 Regulatory Asset is 240 months consistent with the RRSSA. The appropriate annual revenue requirement is \$168,331,000 calculated on Exhibit __ (MO-2) as revised on 8/31/15 and attached to the approved stipulation.
- ISSUE 9:** DEF should be allowed to recover through the capacity cost recovery clause the return on the future nuclear fuel proceeds until they are received and recover the difference between the actual amounts received and the amount credited to the CR3 Regulatory Asset in the December 31, 2015 balance. The pretax rate of return should be 8.12% consistent with the RRSSA Exhibit 10, line 20.
- ISSUE 10:** DEF has calculated the base rate increase consistent with the requirements of the RRSSA. The base rate increase including the \$15 million stipulated reduction is calculated to be .496 cents/kWh as shown in Exhibit ____(MO-4) as revised on August 31, 2015 and attached to the approved stipulation.
- ISSUE 11:** If the Commission does not issue a financing order pursuant to DEF's Petition, the projected amounts included in the CR3 Regulatory Asset should be trued-up. DEF will do the true-up consistent with the RRSSA.
- ISSUE 12:** If the Commission does not issue a financing order pursuant to DEF's Petition, the proposed uniform percentage rate increase to the demand and energy charges by customer rate schedule is that provided in Exhibit ____(MO-4) as revised on August 31, 2015 and attached to the approved stipulation.
- ISSUE 13:** If the Commission does not issue a financing order pursuant to DEF's Petition, the effective date of the requested base rate increase should be six months after the Commission's vote rejecting the financing order.

XI. PROPOSED STIPULATIONS³

- ISSUE 14:** The cost amounts contained in DEF's CR3 Regulatory Asset meet the definition of "nuclear asset-recovery costs" pursuant to Section 366.95(1)(k), Florida Statutes.
- ISSUE 15:** The types of ongoing financing costs identified in DEF's Petition qualify as "financing costs" pursuant to Section 366.95(1)(e), Florida Statutes.
- ISSUE 16:** DEF has demonstrated that securitization has a significant likelihood of resulting in lower overall costs or would avoid or significantly mitigate rate impacts compared to the traditional method of cost recovery pursuant to Section 366.95(2)(a)6., Florida Statutes.
- ISSUE 17:** The amounts that should be authorized for DEF to recover through securitization must meet the criteria set forth in Section 366.95, Florida Statutes. By the nature of this proceeding, that amount will not be known with precision until the bonds are issued. The principal amount of the nuclear asset-recovery bonds should be \$1,283,012,000, representing the projected December 31, 2015 balance of the CR3 Regulatory Asset, subject to true-up to the actual December 31, 2015 balance, plus carrying charges beyond 2015 until the date of the bond issuance, plus upfront financing costs.
- ISSUE 18:** No adjustment is necessary for the deferred tax liability. However, consistent with paragraph 5(j) of the RRSSA, the deferred tax liability will be excluded for earnings surveillance purposes.
- ISSUE 19:** DEF should be required to indemnify customers to the extent customers incur losses associated with higher servicing fees payable to a substitute servicer, or with higher administration fees payable to a substitute administrator, as a result of DEF's termination for cause attributable to its own actions.
- ISSUE 29:** All legal opinions should be reviewed by the Bond Team. All legal opinions associated with the Nuclear Asset-Recovery Bonds should be submitted to the Commission automatically without requiring the Commission to specifically request the documents.
- ISSUE 30:** All transaction documents and subsequent amendments should be reviewed and approved by the Bond Team before becoming operative.
- ISSUE 34:** The Standard True-up Letter should be approved in substantially the form proposed by DEF.

³ FIPUG takes no position on the proposed stipulations included in Section XI.

- ISSUE 37:** The Commission, its staff, its outside counsel, and its financial advisor, along with DEF, its financial advisor, and its outside counsel should be represented on the Bond Team.
- ISSUE 38:** The financing order, including findings of fact and conclusions of law, proposed by DEF should be revised to reflect the Commission's resolution of all issues in this proceeding.
- ISSUE 40:** The energy sales forecasts used to develop the bond amortization schedules and the recovery mechanism are appropriate.
- ISSUE 41:** In accordance with Section 366.95(2)(c)2.g., Florida Statutes, DEF should allocate the nuclear asset-recovery costs recoverable under the nuclear asset-recovery charge consistent with the allocation methodology adopted in the RRSSA approved on November 12, 2013 in Order No. PSC-13-0598-FOF-EI. That approved allocation methodology for DEF is the 12CP and 1/13 AD. Spelled out, that means twelve-thirteenths of the revenue requirement is allocated based on 12 monthly coincident peaks (or demand) and one-thirteenth is allocated based on average demand (or energy).
- ISSUE 42:** If the Commission approves recovery of any nuclear asset-recovery related costs through securitization, the appropriate recovery period for the Nuclear Asset-Recovery Charge is 240 months or until the nuclear asset-recovery bonds and associated charges and approved adjustments have been paid in full but not to exceed 276 months.
- ISSUE 44:** The scheduled final maturity and the legal final maturity of the nuclear asset-recovery bonds are to be determined after the issuance of the financing order.
- ISSUE 45:** DEF's proposed Nuclear Asset-Recovery Charge True-Up Mechanism is appropriate and consistent with Section 366.95, Florida Statutes, and it should be approved.
- ISSUE 46:** The Nuclear Asset-Recovery Charge True-up Mechanism should be conducted at least every six months.
- ISSUE 47:** The Nuclear Asset-Recovery Charges should become effective upon the first day of the billing cycle for the month following the issuance of the nuclear asset-recovery bonds.
- ISSUE 49:** If the Commission denies DEF's request for a financing order, or if the nuclear asset-recovery bonds are not issued for any reason after the Commission issues a financing order, the Commission should approve DEF's alternative request for a base rate increase pursuant to the RRSSA, to be implemented beginning six months after the final order rejecting DEF's request (in the event the financing

order is not issued) or the date upon which DEF notifies the Commission that the bonds will not be issued (in the event the financing order is issued), with carrying costs on the nuclear asset-recovery costs collected from January 1, 2016, through the Capacity Cost Recovery Clause, until such time as the base rate increase goes into effect.

ISSUE 50: The form of tariff sheets to be filed under DEF's tariff, as provided in Exhibit __ (MO-6A) of Witness Olivier's testimony, should be approved.

ISSUE 51: In accordance with Section 366.95(2)(c)2.h., Florida Statutes, if the Commission does not issue a stop order by 5:00 p.m. on the third business day after pricing, the nuclear asset-recovery charges should become final and effective without further action from the Commission.

ISSUE 52: This docket should remain open pursuant to Section 366.95(2)(c)4., Florida Statutes.

XII. PENDING MOTIONS

There are no pending motions at this time.

XIII. PENDING CONFIDENTIALITY MATTERS

DEF's Fourth through Tenth Requests for Confidential Classification are currently pending. Of those pending confidentiality requests, only the Eighth, Ninth, and Tenth Requests for Confidential Classification contain information which may be introduced at the hearing.

XIV. POST-HEARING PROCEDURES

If no bench decision is made, each party shall file a post-hearing statement of issues and positions. A summary of each position of no more than 100 words, set off with asterisks, shall be included in that statement. If a party's position has not changed since the issuance of this Prehearing Order, the post-hearing statement may simply restate the prehearing position; however, if the prehearing position is longer than 100 words, it must be reduced to no more than 100 words. If a party fails to file a post-hearing statement, that party shall have waived all issues and may be dismissed from the proceeding.

Pursuant to Rule 28-106.215, F.A.C., a party's proposed findings of fact and conclusions of law, if any, statement of issues and positions, and brief, shall together total no more than 40 pages and shall be filed at the same time.

XV. RULINGS

Opening statements, if any, shall not exceed 10 minutes for DEF, 20 minutes combined for intervenors, and 5 minutes for Staff.

It is therefore,

ORDERED by Commissioner Ronald A. Brisé, as Prehearing Officer, that this Prehearing Order shall govern the conduct of these proceedings as set forth above unless modified by the Commission.

By ORDER of Commissioner Ronald A. Brisé, as Prehearing Officer, this 12th day of October, 2015.



RONALD A. BRISE

Commissioner and Prehearing Officer
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Copies furnished: A copy of this document is provided to the parties of record at the time of issuance and, if applicable, interested persons.

RG

NOTICE OF FURTHER PROCEEDINGS OR JUDICIAL REVIEW

The Florida Public Service Commission is required by Section 120.569(1), Florida Statutes, to notify parties of any administrative hearing or judicial review of Commission orders that is available under Sections 120.57 or 120.68, Florida Statutes, as well as the procedures and time limits that apply. This notice should not be construed to mean all requests for an administrative hearing or judicial review will be granted or result in the relief sought.

Mediation may be available on a case-by-case basis. If mediation is conducted, it does not affect a substantially interested person's right to a hearing.

Any party adversely affected by this order, which is preliminary, procedural or intermediate in nature, may request: (1) reconsideration within 10 days pursuant to Rule 25-22.0376, Florida Administrative Code; or (2) judicial review by the Florida Supreme Court, in the case of an electric, gas or telephone utility, or the First District Court of Appeal, in the case of a water or wastewater utility. A motion for reconsideration shall be filed with the Office of Commission Clerk, in the form prescribed by Rule 25-22.0376, Florida Administrative Code. Judicial review of a preliminary, procedural or intermediate ruling or order is available if review of the final action will not provide an adequate remedy. Such review may be requested from the appropriate court, as described above, pursuant to Rule 9.100, Florida Rules of Appellate Procedure.