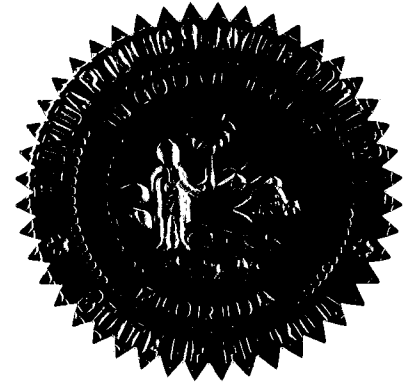


BEFORE THE
FLORIDA PUBLIC SERVICE COMMISSION

DOCKET NO. 070052-EI

In the Matter of:

PETITION BY PROGRESS ENERGY FLORIDA,
INC. TO RECOVER COSTS OF CRYSTAL RIVER
UNIT 3 UPRATE THROUGH FUEL CLAUSE.



ELECTRONIC VERSIONS OF THIS TRANSCRIPT ARE
A CONVENIENCE COPY ONLY AND ARE NOT
THE OFFICIAL TRANSCRIPT OF THE HEARING,
THE .PDF VERSION INCLUDES PREFILED TESTIMONY.

PROCEEDINGS: AGENDA CONFERENCE
ITEM NO. 4

BEFORE: CHAIRMAN LISA POLAK EDGAR
COMMISSIONER MATTHEW M. CARTER, II
COMMISSIONER KATRINA J. MCMURRIAN

DATE: Tuesday, March 27, 2007

PLACE: Betty Easley Conference Center
Room 148
4075 Esplanade Way
Tallahassee, Florida

REPORTED BY: LINDA BOLES, RPR, CRR
Official FPSC Reporter
(850) 413-6734

DOCUMENT NUMBER-DATE

FLORIDA PUBLIC SERVICE COMMISSION 02839 APR-25

FPSC-COMMISSION CLERK

1 PARTICIPATING:

2 DIANNE M. TRIPLETT, ESQUIRE, and JAVIER PORTUONDO,
3 representing Progress Energy Florida, Inc.

4 PATRICIA CHRISTENSEN, ESQUIRE, representing the
5 Citizens of the State of Florida.

6 R. SCHEFFEL WRIGHT, ESQUIRE, representing the Florida
7 Retail Federation.

8 LISA BENNETT, ESQUIRE, and BILL McNULTY, representing
9 the Florida Public Service Commission Staff.

10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

P R O C E E D I N G S

1
2 CHAIRMAN EDGAR: That brings us to Item 4. We'll
3 wait for our staff to get settled in.

4 Ms. Bennett.

5 MS. BENNETT: Good morning, Commissioners. I'm Lisa
6 Bennett, staff attorney for the Public Service Commission.

7 Item 4 before you today is a motion to abate by OPC,
8 AARP, FIPUG and FRF. It's to abate the Commissioners'
9 proceedings on Progress Energy Florida's request for fuel
10 clause cost recovery of its expansion of the CR3, Crystal River
11 3 uprate. Staff recommends that the motion to abate be treated
12 as a motion to stay the proceedings, and that for purposes of
13 administrative efficiency the Commissioners postpone its
14 consideration until after the expansion has been certified by
15 the Siting Board. This is a nondispositive motion, and
16 although oral argument has not been requested, interested
17 persons may participate.

18 CHAIRMAN EDGAR: Thank you, Ms. Bennett.

19 And, Commissioners, as you can see, we do have some
20 interested parties. We'll begin with Progress.

21 MR. TRIPLETT: Good morning, Commissioners. Diane
22 Triplett and Javier Portuondo on behalf of Progress Energy.

23 MS. CHRISTENSEN: Patty Christensen on behalf of the
24 Office of Public Counsel.

25 MR. WRIGHT: And Schef Wright on behalf of the

1 Florida Retail Federation.

2 CHAIRMAN EDGAR: Thank you. And Ms. Triplett.

3 MR. TRIPLETT: Thank you.

4 Commissioners, this case is about one simple issue
5 that should not take much Commission time to address but it
6 will be instrumental in guiding how utilities conduct their
7 business going forward, and that issue is should the Commission
8 apply its precedent to PEF's petition? This determination will
9 take no more than a day. If the answer is yes, then Progress
10 Energy can recover the cost through the fuel clause. If the
11 answer is no, we will recover through base rates in our next
12 base rate proceeding. It is important that the Commission
13 decide this issue promptly and not stay the proceedings. The
14 staff rec states that the Commission acknowledges that there is
15 no prohibition on the Commission deciding the cost recovery
16 issue now and not -- and before the Siting Board issues the
17 decision. This will provide PEF and other utilities adequate
18 guidance going forward so that the companies can plan their
19 capital projects with some degree of certainty.

20 Here, for example, PEF's management carefully
21 considered all aspects of going forward with this project
22 within its business case. An important consideration in the
23 decision analysis was the Commission's prior treatment of
24 similar types of projects for cost recovery. PEF appropriately
25 looked at past Commission decisions that would apply to this

1 type of project and felt that there was sufficient precedent
2 and certainty so that recovery through the clause would be
3 available. PEF recognizes the Intervenor's desire to consider
4 the appropriateness of future uses of the clause. PEF
5 reiterates, however, that it is inherently unfair to change the
6 rules midstream after PEF's management decision to do the
7 project was based on this previous Commission precedent upon
8 which the industry has relied for years. So for these reasons
9 PEF respectfully asks this Commission to not stay the
10 proceedings but to promptly decide this cost recovery issue.
11 Thank you.

12 CHAIRMAN EDGAR: Okay. Thank you very much.

13 OPC.

14 MS. CHRISTENSEN: OPC is here to support staff's
15 recommendation today. We would just ask that it be clear in
16 the order that the motion to abate, while we believe that still
17 is the optimal outcome, that the motion to abate, if it's going
18 to be treated as a stay, that that be clear in the order. And
19 we support minimally staying this until the Siting Board has
20 made a decision.

21 I would briefly like to address PEF's point regarding
22 precedent. The precedent that they're relying on in the fuel
23 docket is Paragraph 10 of the order, which established what was
24 appropriately to go through the fuel clause and what was
25 appropriately not to go through the fuel clause. And even that

1 paragraph says that it would be determined on a case-by-case
2 basis. So I'm not sure how any of the utilities can rely on a
3 provision that requires a case-by-case analysis.

4 That being said, we believe, as was stated in our
5 motion, that this is appropriately a base rate item, that it
6 should be treated as a base rate item, but minimally this needs
7 to wait until the Siting Board makes a determination whether or
8 not this project is even appropriate to go forward. Because if
9 it does not, then the analysis should end there.

10 I appreciate the Commission's time. Thank you.

11 CHAIRMAN EDGAR: Thank you.

12 Mr. Wright.

13 MR. WRIGHT: Thank you, Madam Chairman. Very
14 briefly, I just want to speak in support of Public Counsel,
15 what Ms. Christensen said, and in support of the staff's
16 recommendation as articulated by Ms. Bennett, specifically the
17 recommendation that you treat the motion to abate as a motion
18 to stay and exercise your discretion to grant it at least until
19 after the Siting Board rules. Thanks very much.

20 CHAIRMAN EDGAR: Thank you, Mr. Wright.

21 Mr. Portuondo.

22 MR. PORTUONDO: Thank you, Commissioner. I'd like to
23 expand --

24 CHAIRMAN EDGAR: Mr. Portuondo, I'm sorry. I know
25 it's tough but --

1 MR. PORTUONDO: Okay. All right.

2 CHAIRMAN EDGAR: That's better. Thank you.

3 MR. PORTUONDO: There you go.

4 I'd like to expand on a couple of things regarding
5 the Siting Board and the reference in the staff recommendation
6 to this not being a project. I'd like to point out that this
7 is truly a project. The corporation is spending funds to
8 proceed with the implementation of this uprate. We're
9 anticipating to have spent over \$40 million by the end of this
10 year. The Commission has already saw fit to award the need for
11 this project, and although there are regulatory hurdles that
12 still need to be overcome with regards to the Siting Board, it
13 would seem to be unlikely that this would be a project that the
14 State of Florida would not see as appropriate to support.

15 So having said that, I think that this is ripe for
16 the Commission to take evidence around and have an informed
17 discussion about the purpose for the project and the legal
18 aspects associated with past precedent. So I would again
19 reiterate that I think we should move forward with hearing the
20 matter, and I believe dates have been reserved to hear this
21 sometime in May.

22 CHAIRMAN EDGAR: Thank you.

23 Commissioners? Commissioner Carter.

24 COMMISSIONER CARTER: Thank you, Madam Chair. I just
25 wanted to ask Ms. Christensen and Mr. Wright, on this matter

1 here, if we decide not to stay or abate this proceeding and go
2 forward, what implication, if any, does this have on the Siting
3 Board in doing its, taking care of the function that it
4 provides, serves in this process?

5 MS. CHRISTENSEN: Commissioner, I don't believe that
6 this would have any impact on the Siting Board's procedure.

7 The Commission, as you may be aware, has already made
8 its determination in a different docket; I think it was Docket
9 060642 regarding the need determination on this project.

10 That's what's required of the Commission prior to this matter
11 proceeding through the siting procedures. And this is
12 something that is separate and apart. This is talking about
13 what's the appropriate method of recovery. And, you know, as
14 we stated time and again, we believe the appropriate recovery
15 is base rate recovery, and it has no impact on whether or not
16 this will proceed through the Siting Board Act as far as
17 whether or not the Commission decides to take up the
18 methodology of recovery at this time. You've already made your
19 determination as required by the Siting Act by making the need
20 determination.

21 COMMISSIONER CARTER: Follow-up. I'm trying to find
22 what is the genesis of your -- what is your issue? Help me to
23 understand what is the nature of your concern, your concern?

24 Mr. Wright, I'd love to hear your thinking on that as
25 well, please.

1 MS. CHRISTENSEN: The nature of our issue has to do
2 with PEF coming in and requesting a certain type of methodology
3 for recovery. We believe that it is premature for them to be
4 coming in and asking for any type of recovery methodology at
5 this point. But, moreover, we believe that the methodology
6 they're asking for, recovery through the fuel clause, is
7 inappropriate for this type of project.

8 If you review the statutory precedent, we believe
9 that it's clear that this is a base rate type item and that
10 this matter should essentially be abated until the next base
11 rate proceeding. However, we are in agreement with staff's
12 recommendation that at least minimally this should be abated
13 until the Siting Act completes -- the Siting Board completes
14 its process and makes the determination whether or not this
15 project should go forward.

16 And contrary to, I think, the implication that
17 Mr. Portuondo makes that somehow this money would be
18 unrecoverable if it was to be flowed through base rates, that's
19 not the case. If you look at the statute, particularly the
20 nuclear power statute which I know the Commission has been
21 doing a lot of work on, those types of costs are absolutely
22 recoverable if they're prudent and reasonably expended in base
23 rates at a future point in time. And we're not disagreeing
24 that they may be recoverable at a future point in time. We're
25 just disagreeing that we need to determine the appropriate

1 methodology at this point, and we think that that's very
2 premature.

3 CHAIRMAN EDGAR: Commissioner Carter, if I may before
4 we ask Mr. Wright to jump in also, I would like to follow up on
5 --

6 COMMISSIONER CARTER: Yes, ma'am.

7 CHAIRMAN EDGAR: Ms. Christensen, I think one of the
8 things I'm struggling with is how would the consumers or the
9 citizens be harmed if we were to go to hearing to hear more
10 evidence, more information, to hear evidence as to additional
11 details about the proposed project and the, the law and the
12 facts regarding recovery mechanisms, whether through base rates
13 or through fuel or some other, other way? How would the
14 consumers be harmed if we were to go ahead and hear evidence on
15 that sooner, as it may, versus after the Siting Board has
16 acted?

17 MS. CHRISTENSEN: Well, I think one of the things
18 we're looking at is completely prospective types of costs,
19 charges, project details at this point versus a base rate where
20 you have concrete facts about the project on the ground that
21 everybody can test and look at for prudence and reasonableness.
22 This is putting essentially the prudence and reasonableness
23 cart before the horse here. We don't know exactly what they're
24 planning on doing and how exactly they're planning on doing it.
25 They're starting their project, we have some details, but we

1 wouldn't have the full picture as you would in a base rate
2 proceeding. And I think the, the customers are always harmed
3 when costs are not put in the appropriate box, when they're not
4 appropriately put in base rates when they should be put into
5 base rates and allowed to flow through the fuel clause.
6 Essentially this is why we have discussed putting before the
7 Commission an omnibus proceeding to discuss what's
8 appropriately to go through the fuel clause versus through base
9 rates because these are the types of policy decisions that
10 really need a more global look. But in this specific case I
11 think what we're talking about is putting the cart before the
12 horse.

13 CHAIRMAN EDGAR: Ms. Christensen, I think I heard you
14 on one hand say it should be a case-by-case determination and
15 on the other hand say it should be a global determination, and
16 I'm having a hard time reconciling that.

17 MS. CHRISTENSEN: Let me clarify. The original order
18 that discussed what was appropriate to go through the fuel
19 clause has in it a Paragraph 10 that talks about fuel savings
20 type cases, which is presumably the one that PEF is moving
21 under this, in these circumstances, and that states that it
22 will be examined on a case-by-case basis. That's, that was
23 what I was referring to as far as the case-by-case basis.

24 And PEF's contention that it's relying on precedent,
25 I was just pointing out the fact that even in the Commission's

1 own order it says that it's going to make these types of
2 determinations on a case-by-case basis regarding fuel savings
3 cases.

4 Now that said, we disagree that this is a case that
5 is even appropriate to bring under that paragraph. We believe
6 that as far as reviewing the policy type issues of what should
7 be in a fuel clause and what should be through base rates needs
8 to have a global look at what types of costs should go through
9 the fuel clause and be allowed to flow through the fuel clause
10 as opposed to what is appropriate for base rates. We've seen
11 trends that we believe are concerning to the Office of Public
12 Counsel that a lot of costs are being shifted, where they
13 should appropriately be in base rates are being shifted to the
14 fuel clause. And that's why we're saying a global look at it
15 with, with the ability to look at items and costs and things
16 that have been going through the fuel clause beyond just this
17 docket is the appropriate way to address these global policy
18 issues about what's appropriately in base rates, what's
19 appropriately in fuel costs, and how and what the appropriate
20 balance is for things to be flowed through fuel versus base
21 rates. We think that we need to get back to the original
22 policy that was stated in that original fuel order.

23 COMMISSIONER CARTER: It seems to me --

24 CHAIRMAN EDGAR: Commissioner Carter.

25 COMMISSIONER CARTER: It seems to me, Madam Chairman,

1 that, you know, a duck is still a duck. I mean, the citizens
2 are still going to have to pay these costs. Either they can
3 pay now or pay later, but they're still going to have to pay
4 it. My concern is I'm just trying to figure out what -- I
5 still have not heard a response to, to help me understand the
6 nature of the, the argument put forth by OPC and Mr. Wright at
7 the Retail Federation. It seems to me that no one's discounted
8 or, even with staff's, disagreed that they've spent \$40 million
9 on this project yet and no one has said why the recovery should
10 not be granted. They just said we need to wait. You know, as
11 we say in South Georgia, wait is what broke the wagon down.
12 And I'm not finding anything that would cause us to, to, you
13 know, to wait, Madam Chairman. I'm trying to find it but I
14 don't see it.

15 CHAIRMAN EDGAR: Commissioner McMurrin.

16 COMMISSIONER McMURRIAN: I have a question for
17 Ms. Christensen too. I'm sorry. I'll try to speak up.
18 Ms. Christensen, are you saying that you think we need to have
19 all the numbers in front of us in order to decide which box
20 it's supposed to go in for recovery? And I had some
21 discussions with staff yesterday about this too, but I'm still
22 having a hard time seeing why we need all the facts in front of
23 us in the same way that you would after a need determination,
24 and you're talking about cost recovery, in order to decide
25 whether it's appropriate for base rate or fuel. So if you'd

1 just help me. I just want to make sure I understand.

2 MS. CHRISTENSEN: Well, I think fundamentally that
3 brings up the issue of not having all the facts in front of
4 you, and I think that's ultimately our position. They're going
5 to be spending \$40 million this year, but they're going to be
6 spending a whole lot more money over the course of this
7 project. We need to -- when you have a base rate proceeding,
8 the company is able to -- you know, they go ahead and they
9 expend that money. They're going to get it recovered through
10 rates if it's reasonable and prudent. But we have -- and we
11 are in a better position to determine whether or not the
12 decisions they made are reasonable and prudent if we have a
13 full picture of what they're doing. If we have to try and make
14 a piecemeal case year by year through fuel clauses, pieces of a
15 project come in, one, it's hard for us to tell whether or not
16 they've approached the project on an overall reasonable and
17 prudent basis, and, two, I think what you end up having is the
18 ability for the company to have a blank check to spend, you
19 know, whatever they want on the project without us having the
20 ability to, with a reasonable expectation of being able to see
21 whether or not they're doing this project on a reasonable
22 basis. And Mr. Wright may be able to add to that.

23 CHAIRMAN EDGAR: And, Mr. Wright, I look forward to
24 your response, but I feel compelled to say that I don't believe
25 this Commission has ever issued a blank check without review to

1 a utility.

2 MS. CHRISTENSEN: And if that was the case, then I
3 apologize to the Commission. I didn't intend to make it sound
4 as if it would be a blank check. But it's a little bit
5 difficult to predict future cost as it's coming in piecemeal
6 than when you have the ability to look at the project in toto
7 once all the expenses are made and determine whether or not all
8 those expenses were reasonable and prudent, than try and
9 anticipate future expenditures for a project that's going
10 forward. And at this point I'm not sure that we do know the
11 total amount that the company is anticipating spending on this
12 project because we're using actual and estimates versus looking
13 at actual costs, and that's what I intended to say.

14 CHAIRMAN EDGAR: Mr. Wright, your turn.

15 MR. WRIGHT: Thank you, Madam Chairman. I will be
16 brief. I understood we were here on the procedural issue today
17 and that is what I was hoping to address and trying to address.

18 We, we moved to abate the case until a lot later, to
19 a rate case. That's what we think is appropriate. We support
20 the staff's recommendation, frankly, as sort of a temporizing
21 action that is well within the Commission's discretion.

22 Let me just make it real clear where we are. There
23 is hardly an expenditure by a utility that can be conceived of
24 that is more in the nature of a rate base/base rates item than
25 an investment in a power plant. These are costs that are

1 appropriate for a base rate case. Progress will likely have a
2 base rate case in the year 2009 for new rates to take effect
3 sometime in 2010. That's the right time to address the cost
4 issues here. That's -- we'll know what the costs are then.
5 That's the right place for them. That's why we asked for it to
6 be abated. Thank you.

7 CHAIRMAN EDGAR: Thank you, Mr. Wright. I and, I'm
8 sure, my other colleagues are aware that a request for a motion
9 to abate is what is before us. However, I personally feel that
10 I am not in a position to make a decision on that motion unless
11 I understand a little more about what would happen if that
12 motion were to be denied, and that's why I think the line of
13 questioning is appropriate in my personal opinion.

14 Progress, Mr. Portuondo.

15 MR. PORTUONDO: Commissioners, I guess in hearing the
16 Office of Public Counsel and their arguments, I, I struggle. I
17 think there's some confusion on their part.

18 Progress is not here before you in this docket asking
19 for approval of the costs that will be incurred associated with
20 this project. That determination, whether it be decided
21 ultimately that it's base rates or it's fuel clause, will take
22 place, as Ms. Christensen and Mr. Schef (sic.) have indicated,
23 once the total accounting of the cost has taken place.

24 What we're asking the Commission to decide is simply
25 based on the 1985 order that established the opportunity to

1 come before you with these types of innovative projects that
2 create fuel savings, to have you review the concept of the
3 project and see if you believe that it's appropriate to recover
4 through the fuel clause. That is what's before you. There is
5 a project, there is a plan. Everything is in place today for
6 you to take evidence and consider this project within that
7 parameter. You are not approving, you're not giving us a blank
8 check. We will still have the obligation to demonstrate that
9 we were prudent in the execution of the project, whether it's
10 in base rates or the fuel clause. Thank you.

11 CHAIRMAN EDGAR: Ms. Triplett.

12 MR. TRIPLETT: Thank you. And just to clarify on the
13 legal standard that we're here today, in response -- I think
14 you hit the nail right on the head. In response to what would
15 be the harm if you considered the proceeding, the only
16 arguments that I'm hearing are arguments that go to whether or
17 not this is appropriate for base rates or cost recovery, and
18 that is what we want to hear at the May hearing. And that is
19 what, as Mr. Portuondo said, that you have all of the evidence
20 and there is no harm to decide that particular case, there's no
21 reason to stay. Thank you.

22 CHAIRMAN EDGAR: Thank you. Ms. Christensen, do you
23 need to take a moment to get your pen? Are you okay?

24 MS. CHRISTENSEN: I'm okay.

25 CHAIRMAN EDGAR: You're okay? All right. I always

1 need mine.

2 Okay. Commissioners, questions. Commissioner
3 Carter.

4 COMMISSIONER CARTER: I was just thinking from
5 staff's standpoint, and help me, I think the need determination
6 has already been approved; is that correct?

7 MS. BENNETT: Yes, Commissioner Carter, it has been
8 approved.

9 COMMISSIONER CARTER: And funds have been expended
10 based upon this determination; correct?

11 MS. BENNETT: According to Mr. Portuondo, yes.

12 COMMISSIONER CARTER: And there's, and there's
13 nothing in the statute that would preclude us from determining
14 whether or not the appropriate, whether or not the expenditures
15 made were appropriate or not. Is there any prohibitions on us
16 doing that?

17 MS. BENNETT: No. There's no prohibition on you
18 hearing the case.

19 COMMISSIONER CARTER: So I guess, you know, I'm still
20 confused, Madam Chairman, why we're even -- with this whole
21 issue. I'm still confused why we're even dealing with this.

22 MR. McNULTY: Commissioner Carter, if I can add one
23 thing, and maybe the company can add a point of clarification
24 on this.

25 I think you asked whether or not the money had been

1 expended on the basis of the determination that the Commission
2 had made, and the company had earlier expressed that they had
3 spent \$40 million to date. And I would suggest to you that I
4 think at least some portion of that was, was spent prior to the
5 determination. And they could clarify that for us at this
6 time, if they'd like -- if you'd like them to do so.

7 COMMISSIONER CARTER: My thing, Madam Chairman, is --

8 CHAIRMAN EDGAR: Commissioner Carter.

9 COMMISSIONER CARTER: -- as I read it, the question
10 before us is: Should the Commission grant the motion to abate
11 Progress Energy's request for authority to recover costs of the
12 CR3 expansion through the fuel cost recovery clause? Staff's
13 recommendation is no. I don't see a basis for saying no.

14 The second issue before us is: Should the docket be
15 closed? And I guess based upon how we handle Issue 1 will
16 determine Issue 2, and that's where I think we are.

17 CHAIRMAN EDGAR: Commissioner McMurrin.

18 COMMISSIONER McMURRIAN: Yes. I had some more
19 follow-up for Ms. Christensen. I guess I should clarify what I
20 said before. I'm not trying to say that we don't need all the
21 facts and the numbers to ultimately decide recovery, the
22 recovery amounts. I guess what I'm trying to distinguish is it
23 seems to me that no matter what numbers are before us, that the
24 parties' positions won't change and that you will still believe
25 that these are appropriate items for recovery through base

1 rates and that Progress is still going to maintain that it's
2 appropriate recovery through fuel. And that if -- and maybe I
3 need clarification too from staff on exactly what issues will
4 be before us in May as currently scheduled, but it seems to me
5 that it may not change based on any additional numbers or facts
6 put forth by Progress. Can you help me? Am I making myself
7 clear?

8 MS. CHRISTENSEN: Well, I think fundamentally when
9 we're talking about at least waiting until the Siting Board
10 acts, what you would have here is -- essentially they need
11 permission to go forward with this uprate from the Siting
12 Board. If they say no, that ends the project. Now there may
13 be some expenditures that they will have expended up until that
14 point and that can be addressed at that time, but that would
15 end the inquiry. Then you wouldn't have a project that's going
16 on into the future and you wouldn't have additional costs
17 expended. And it may be that the Commission needs to determine
18 whether or not, you know, how reasonable and prudent it is for
19 some of these costs to be expended before you have approval,
20 final approval from the Siting Board that the project can go
21 forward.

22 Now, you know, and that being said, I think that's
23 one reason to support the motion to stay. I mean, I think you
24 end up putting the cart before the horse. And, again, I'll
25 reiterate this, that, you know, the companies have a management

1 obligation to spend their money wisely, but that doesn't mean
2 that they should automatically get recovery through the fuel
3 clause. And I think that what we fundamentally have -- I think
4 you're correct in saying we fundamentally have a difference of
5 opinion on whether or not this is a base rate item or even
6 eligible for recovery through the fuel clause. But usually
7 when you're looking at costs that are coming through the fuel
8 clause, they're noncontroversial projects. You know the amount
9 and cost of those projects fully when they're asking to be
10 recovered through the fuel clause. It's not a concept that
11 you're approving. You're approving an actual project that has
12 actual dollars expended to it. Here what Progress essentially
13 is asking you to do is approve the conceptual recovery of a
14 project that has yet to be approved, and that's for the
15 purposes of this motion something that we have objected to.

16 CHAIRMAN EDGAR: Commissioner McMurrian.

17 COMMISSIONER McMURRIAN: Thank you. I guess I'm
18 seeing it somewhat -- and I may have it wrong. I do want staff
19 to sort of address this. But in the environmental clause, for
20 instance, sometimes we have spinoff dockets where we take up
21 the issue of whether or not the project is appropriate for
22 environmental cost recovery. There's no dollars being put into
23 the environmental cost recovery clause yet because, of course,
24 those -- in the end it's only the actual costs that are
25 recovered and those things have to be audited and we do that in

1 the course of the actual ECRC hearing. But we make a
2 determination upfront whether or not we think those, those
3 things are appropriate for ECRC recovery. And so can you help
4 distinguish sort of what we have here in that you have a
5 proposed project proposed by the company through fuel and
6 making a determination in this case as to whether or not it may
7 be appropriate to go through fuel without having the final
8 decision made and all the costs in front of us?

9 MS. CHRISTENSEN: And I agree with you that through
10 the ECRC clause you can have an environmental project that's
11 proposed. But even in the environmental project arena there is
12 limitations as to what can be approved during a given year.
13 You have to have an actual stated project and an actual dollar
14 amount attached to it. A good case for that is the CAMR, CAIR
15 rules. We knew that there was an environmental regulation, we
16 knew that they were going to have to do something to comply
17 with it, but you can't approve the dollars until you know what
18 the actual projects are going to be.

19 The other thing that's different between a fuel
20 scenario and the environmental scenario is you've got a statute
21 that governs what's recoverable through the environmental cost
22 recovery clause. And I think it's set forth pretty clearly
23 what's recoverable through the environmental cost recovery
24 clause, so you're not making a theoretical decision, I would
25 suggest. I think you would be looking at the actual parameters

1 of a project and saying does it meet the criteria of the
2 statute or does it not? Which is different than looking at a
3 fuel, a proposed fuel project, which I would say has to be an
4 actual project, not a theoretical project, an actual project
5 with dollar amounts attached to it. When you've done that in
6 the fuel, it's been an actual realized project with real
7 dollars attached to it and not in the same vein as the ECRC
8 clause. I mean, this just lends, I think, another reason as to
9 why base rates are appropriate for a generation capital
10 project.

11 COMMISSIONER McMURRIAN: It looked as if Mr. Wright
12 was wanting to weigh in, but I wasn't sure. But I did want
13 staff to address some of the points I raised.

14 CHAIRMAN EDGAR: Mr. McNulty.

15 MR. McNULTY: Yes. Commissioners, there have been
16 precedents in the, in the fuel clause for cost recovery to be
17 approved prior to the costs being incurred. We've had a couple
18 of examples of that just in the past year with the Southeast
19 Supply Header petitions by Florida Power & Light and Progress.
20 Also we had the Cypress Pipeline that was approved for Progress
21 prior to those costs being incurred while still through the
22 regulatory process. We do have some antecedents to this type
23 of a request, and I just wanted to point that out as a point of
24 clarification. It's not just in the environmental clause where
25 we have kind of taken a two-step process of first recovery of

1 the type of cost that is being contemplated and, you know,
2 conceptually what would flow through the fuel clause versus
3 base rates, and then later on the actual costs that are
4 incurred being presented in testimony for recovery. I just
5 wanted to make that point clear.

6 COMMISSIONER McMURRIAN: Mr. McNulty, I just want to
7 make sure I understand. Post-May what issues exactly would the
8 Commission be voting on if we continue down this path?

9 MR. McNULTY: The essential issues that we would
10 have -- I think we've had a compilation of issues from the
11 parties in this docket, and so this isn't the official list and
12 could be expanded. But in general, we're going to be examining
13 the question of whether or not this should be recovered through
14 the fuel clause or whether it should be recovered in base
15 rates. That's a primary issue.

16 Also, we would want to come up with an estimate and
17 validate the estimate of fuel savings that were presented, and
18 we would also like to look at the effect of any decision in
19 this case of the 2005 settlement. And then finally we may also
20 be looking at the question of fuel diversity.

21 COMMISSIONER McMURRIAN: So, Mr. McNulty, do I
22 understand we wouldn't be approving any dollar amount for
23 recovery?

24 MR. McNULTY: While we may be looking at those dollar
25 amounts, we would not be approving anything to go through the

1 fuel clause for purposes of fuel cost recovery. That would
2 come in -- they're seeking cost recovery in 2010 according to
3 their testimony, and we would likely see something in the
4 projection filing of 2009 that would be heard by this
5 Commission for cost recovery in November of 2009.

6 COMMISSIONER McMURRIAN: Commissioners, I'm back
7 where I started where it seems similar to what we do with the
8 environmental cost recovery clause to me. I realize it's
9 different and Ms. Christensen made good points about there you
10 have statutes and you have criteria about whether or not it's
11 appropriate for recovery. Fuel is more based on precedent
12 through prior orders.

13 It still seems to me though that you can take up the
14 issue of whether or not it could go through base rates or fuel
15 without necessarily having all the numbers before you, in the
16 same way when the environmental projects are proposed we do
17 have some sort of estimate usually. But we're not approving an
18 exact number to go through environmental because that gets
19 taken up later through the environmental clause. So I'm still
20 having trouble differentiating why this would be different than
21 that.

22 Now there may be reasons why it doesn't have to be
23 decided this way and it can wait for efficiency and those sort
24 of things, but I don't see that it's that much different.

25 MR. WRIGHT: Madam Chairman.

1 CHAIRMAN EDGAR: Mr. Wright.

2 MR. WRIGHT: Thank you. Just very, very briefly.

3 If I could get clarification from one thing Mr.

4 McNulty said. I think that he said there would be a filing

5 for recovery in 2009 that would be heard in 2009. Did he, did

6 he mean heard in 2008 for recovery in 2009?

7 MR. McNULTY: I meant -- obviously these costs are
8 being incurred by the company today and already have been and
9 will be up until the point that the various phases of this
10 project go into service. And so in that regard, what we're
11 looking for is a projection filing in 2009 of 2010 costs, and
12 that would be at the time that Phase I of this project, a
13 40-megawatt uprate, would go into effect. And it would be, as
14 I understand the company's filing, it would be at that point
15 in, starting the first billing cycle in 2010 that customers
16 would see an impact on their rates.

17 MR. WRIGHT: Thank you for that clarification. And
18 with that I just wanted to say this. I believe the staff have
19 analyzed the legal procedural issue entirely correctly. You
20 have a lot of discretion. I agree with them there's no
21 statutory prohibition to you hearing this now. I think that
22 you do have the discretion to treat our motion to abate as a
23 motion to stay. I think our position continues to be
24 substantively what it is, but procedurally that we think the
25 staff have reached the right recommendation to stay this

1 proceeding until sometime closer to when it's going to make a
2 difference. It's early 2007. The earliest apparently this
3 would be heard would be the fall of 2009. We support the staff
4 recommendation. Thank you.

5 CHAIRMAN EDGAR: Thank you. Mr. Wright, you once
6 again have pointed out the procedural nature of what is before
7 us today and that it is the motion to abate. I have some
8 concern, Ms. Christensen, because I do feel like a few moments
9 ago in response to Commissioner McMurrian you made some
10 statements that I thought I heard you say that we would be
11 automatically determining that this would go through the fuel
12 clause. And I must say I have made absolutely no
13 predetermination about whether fuel clause is the correct
14 mechanism or base rates is the correct mechanism. I do
15 understand that it is a procedural motion that is before us. I
16 do think, as I see it, that it is a question of timing and as
17 to when we get into these issues further and hear evidence and
18 sworn testimony.

19 I have -- I also agree that the staff has laid out
20 that we have flexibility on this and has done a very concise,
21 which I always appreciate, analysis of the law on that point.
22 I though have not really heard anything compelling in my mind
23 that leads me to a conclusion of greater administrative
24 efficiency and that that should win out, if indeed we were to
25 go with a motion to abate or, in the alternative, a motion to

1 stay. And I also have -- in my mind do not see a, see damage
2 or potential damage to the consumers if indeed we are to go
3 forward and hear additional information on this point. I also
4 agree that the issue as to what goes through a fuel clause or
5 ECRC or base rate and other mechanisms is one that, quite
6 frankly, I look forward to additional discussion on those
7 policy issues. I think that they are important and that it
8 will be very useful and illuminating for us to have continued
9 discussion and again hear evidence on those points.

10 Commissioners, we've had questions, we've had
11 discussions. Commissioner Carter.

12 COMMISSIONER CARTER: Madam Chairman, I'm going right
13 back to where I started. I asked a question initially and
14 Ms. Christensen said it has nothing to do with the Siting
15 Board, but she went through a tremendous discourse with
16 Commissioner McMurrin about the Siting Board. This is a
17 procedural matter. And whenever we -- if we have an
18 opportunity to do our jobs versus wait, I say we don't wait.
19 And as such, Madam Chairman, at the appropriate time I'm
20 prepared to make a motion that we deny staff's motion on this
21 issue.

22 CHAIRMAN EDGAR: Commissioner McMurrin.

23 COMMISSIONER McMURRIAN: I guess just for
24 clarification, if I'm understanding correctly, I think perhaps
25 the recommendation would need to be modified to just a simple

1 no.

2 CHAIRMAN EDGAR: Ms. Bennett, I think we all know
3 where we're trying to go. Can you help us get there?

4 MS. BENNETT: Sure. The motion would be to deny the
5 motion to abate or stay proceedings.

6 CHAIRMAN EDGAR: Mr. Cooke, additional thoughts?

7 MR. COOKE: I'm a little reluctant to raise this
8 issue but I just want to make something clear and I don't want
9 to create a buzz saw. There's no procedural order issued in
10 this case yet and the dates in May have been discussed here.
11 We would need to look carefully at when this could be
12 conducted. I know that Progress said it's a one-day matter,
13 but, as you all know, there's discovery, testimony, et cetera.
14 So we would need to look at those schedules. And I don't
15 think -- I just would like to caution us to think that we
16 necessarily will conduct this hearing in May.

17 But I think that Ms. Bennett is correct. Deny the
18 motion for abatement, reject staff's recommendation for a stay,
19 and simply direct us to conduct a hearing on this at an
20 appropriate time in the near future.

21 COMMISSIONER CARTER: I so move.

22 COMMISSIONER McMURRIAN: So seconded.

23 CHAIRMAN EDGAR: Okay. And I'll add that we will, of
24 course, by virtue of the administrative duties of my office,
25 work with our staff, of course, and all of the parties to

1 schedule dates that will enable us to most appropriately
2 conduct the business that we need to conduct fully. And I
3 concur with the motion. So with that, all in favor, say aye.

4 (Unanimous affirmative vote.)

5 CHAIRMAN EDGAR: Opposed? Show it adopted.

6 Thank you to our staff and thank you to the parties,
7 and thank you for working with us with the difficulties that we
8 have today.

9 (Agenda Item 4 concluded.)

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

STATE OF FLORIDA)
 :
COUNTY OF LEON)

CERTIFICATE OF REPORTER

I, LINDA BOLES, RPR, CRR, Official Commission Reporter, do hereby certify that the foregoing proceeding was heard at the time and place herein stated.

IT IS FURTHER CERTIFIED that I stenographically reported the said proceedings; that the same has been transcribed under my direct supervision; and that this transcript constitutes a true transcription of my notes of said proceedings.

I FURTHER CERTIFY that I am not a relative, employee, attorney or counsel of any of the parties, nor am I a relative or employee of any of the parties' attorneys or counsel connected with the action, nor am I financially interested in the action.

DATED THIS 2nd day of April, 2007

Linda Boles
LINDA BOLES, RPR, CRR
FPSC Official Commission Reporter
(850) 413-6734