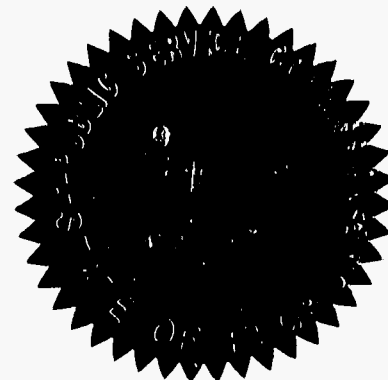


BEFORE THE  
FLORIDA PUBLIC SERVICE COMMISSION

DOCKET NO. 080009-EI

In the Matter of:

NUCLEAR COST RECOVERY CLAUSE.  
\_\_\_\_\_ /



PROCEEDINGS:            AGENDA CONFERENCE  
                              ITEM NO. 11

BEFORE:                    CHAIRMAN MATTHEW M. CARTER, II  
                              COMMISSIONER LISA POLAK EDGAR  
                              COMMISSIONER KATRINA J. McMURRIAN  
                              COMMISSIONER NANCY ARGENZIANO  
                              COMMISSIONER NATHAN A. SKOP

DATE:                      Tuesday, October 14, 2008

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

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

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FPSC-COMMISSION CLERK

1 PARTICIPATING:

2                   LISA BENNETT, ESQUIRE, and JIM BREMAN, appearing on  
3 behalf of Commission staff.

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## P R O C E E D I N G S

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2 CHAIRMAN CARTER: And with that, Commissioners, we  
3 are on Item 11. Okay.

4 MR. BREMAN: Good morning.

5 CHAIRMAN CARTER: Staff, you're recognized.

6 MR. BREMAN: My name is Jim Breman. Commissioners,  
7 Chairman, Item 11 addresses Progress's and FPL's petition for  
8 recovery of costs associated with the construction of new  
9 nuclear generation pursuant to Section 366.93, Florida  
10 Statutes, and Rule 25-6.0423, Florida Administrative Code.

11 As a preliminary matter, with your permission I'd  
12 like to note we have identified various scrivener's errors and  
13 an errata sheet has been circulated. I can address the ones  
14 that appear in the recommendation paragraph at this time, if  
15 that's your desire.

16 CHAIRMAN CARTER: Commissioners, on the scrivener's  
17 errors, do you need further clarification on that or is it  
18 okay? Without objection, show it done.

19 You may proceed.

20 MR. BREMAN: Commissioners, I have a very brief  
21 overview of the recommendation, if that's your desire.

22 CHAIRMAN CARTER: You may proceed.

23 MR. BREMAN: If you turn to Page 5 of the  
24 recommendation, Commissioners, we've included a table of  
25 contents that you can use as a road map in your decisions

1 today. It groups the issues in three sections. The first  
2 group implements, addresses implementation matters that apply  
3 to both utilities but at this time only impact Progress.

4 The second group of issues address Progress's  
5 petition. The key issues affecting Progress's recoverable  
6 amounts are Issues 1A and 13.

7 Turning to Page 6, you'll find all of FPL's issues.  
8 The only disputed issue for FPL was raised by OPC, and that is  
9 addressed in Issue 2A. Thank you, Commissioners. That's my  
10 high-level overview of the recommendation.

11 CHAIRMAN CARTER: Thank you. And, Commissioners, we  
12 had asked staff, and I appreciate this, is that they gave us a,  
13 kind of a two-pager to kind of, an organizational structure to  
14 kind of lay things out. With that -- and this is limited to  
15 Commissioners and staff. With that, any comments, discussions,  
16 questions from the bench?

17 COMMISSIONER EDGAR: Mr. Chairman, I --

18 CHAIRMAN CARTER: You're recognized.

19 COMMISSIONER EDGAR: Thank you. Looking at the way  
20 staff has laid this out as described and also in the vote sheet  
21 that has been supplied to us, I guess I'd like to ask staff to  
22 very briefly elaborate a little bit more on the policy issues  
23 that are contained in the recommendation for 1A, 1B and 1C,  
24 realizing that they might kind of, kind of go together.

25 MR. BREMAN: Certainly, Commissioner.

1 Issue 1A addresses the timing of when completed  
2 phases of a project are placed in commercial operation, that  
3 they should be no longer included in the clause.

4 You have three options: You can leave the cost  
5 recovery of these completed phases in the clause until the  
6 entire project is completed. That's Progress's initial filing.

7 The second option is to remove costs from recovery  
8 for phases that are completed at the end of the year, as staff  
9 recommends.

10 The third option is to remove cost recovery of these  
11 completed phases from the clause immediately upon commercial  
12 operation as suggested by the Intervenors.

13 In Issue 1B we address on how to calculate the cost  
14 recovery amounts should you agree with either Progress's  
15 initial approach or staff's approach in Issue 1A.

16 Issue 1C explains that in general site clearing work  
17 is completed when the property is prepared to a condition that  
18 can allow the initiation of the first real construction  
19 activity. Distinguishing between preconstruction and  
20 construction costs for purposes of the clause should be  
21 considered on a case-by-case basis.

22 Do you want me to go into more depth on those?

23 COMMISSIONER EDGAR: That works for me unless there  
24 are other questions on those.

25 CHAIRMAN CARTER: Commissioner Argenziano.

1 (Technical difficulties with microphone.)

2 I didn't touch it. I didn't touch it.

3 COMMISSIONER ARGENZIANO: Let's see if this works.

4 Maybe I'll break this one.

5 I think what I, what I want clarification on, the  
6 statute indicates that the, that I guess it can go into rate  
7 base upon commercial, upon it being in commercial service. And  
8 if you would just tell me I guess for the record what  
9 particular areas will be going into the base rate that are in  
10 commercial service now. Because if it's in commercial service,  
11 according to the statute, it is allowed to go into the rate  
12 base and that's what I need to know.

13 MR. BREMAN: I think I understand your question. I  
14 might restate it back. You're asking if we've reviewed the  
15 costs that are being recovered through the clause and whether  
16 those costs are the same as what would be included in base  
17 rates or are you asking what are the components?

18 COMMISSIONER ARGENZIANO: No. The statutes allow for  
19 those costs to be included into the rate base. Now if they are  
20 in commercial service, what component is in commercial service  
21 at this point that is going into the rate base?

22 MR. BREMAN: It's called the MUR, the measurement  
23 uncertainty recapture phase of Progress's CR-3 uprate project.

24 COMMISSIONER ARGENZIANO: Okay.

25 MR. BREMAN: It provides an additional 12 megawatts

1 of nuclear generation.

2 COMMISSIONER ARGENZIANO: And it is in service?

3 MR. BREMAN: And it is in service.

4 COMMISSIONER ARGENZIANO: Well, then statutorily  
5 that's what we have to do. That's all I needed to know. Thank  
6 you.

7 MR. BREMAN: Thank you, Commissioner.

8 CHAIRMAN CARTER: Commissioners, anything further?  
9 Commissioner Edgar.

10 COMMISSIONER EDGAR: Then, Mr. Chairman, depending on  
11 how you want to approach this, I'm prepared to offer a motion  
12 on behalf, or in favor of the staff recommendation on Issues  
13 1A, 1B and 1C, if that helps us kind of move through it, with  
14 the understanding on my part that the way the staff  
15 recommendation is worded, that it is an efficient way of  
16 working through the statutory requirements on an annual basis.

17 COMMISSIONER SKOP: Second.

18 CHAIRMAN CARTER: It's been moved and properly  
19 seconded.

20 Commissioners, you've heard the motion in regards to  
21 our policy issues on 1A, 1B, 1C. Are there any further  
22 discussions or questions? Any debate?

23 Hearing none, all those in favor let it be known by  
24 the sign of aye.

25 (Unanimous affirmative vote.)

1 All those opposed, like sign. Show it done.

2 Commissioner Edgar.

3 COMMISSIONER EDGAR: Okay. Then I think that would  
4 bring us, as we kind of group these two issues 3A and 3B, I'm  
5 comfortable with those from the hearing and from the  
6 description analysis that we have in the staff recommendation,  
7 so I have no questions. And I guess I would see if there are  
8 other questions and, if not, I can make a motion.

9 CHAIRMAN CARTER: How about this, Commissioner? What  
10 about the -- and I may be being overly enthusiastic, but would,  
11 would it be appropriate if we looked at these from the Progress  
12 Energy project management, the uprate, the Levy Units 1 and  
13 2 in toto, unless there are some questions on that,  
14 Commissioners -- do you see where I'm going on this?

15 COMMISSIONER EDGAR: Mr. Chairman, I'm comfortable  
16 with taking 3A, 3B, 7E through 11G and 5B through 11D and 13--

17 CHAIRMAN CARTER: Commissioners --

18 COMMISSIONER EDGAR: -- as a group.

19 CHAIRMAN CARTER: -- are we all, are we all  
20 comfortable with that?

21 COMMISSIONER SKOP: I'd second that.

22 CHAIRMAN CARTER: It's been moved and properly  
23 seconded to approve staff recommendations on the, I'll just  
24 call it the omnibus Progress Energy --

25 COMMISSIONER EDGAR: All of the Progress issues.



1 CHAIRMAN CARTER: All of the Progress issues.  
2 Any questions or concerns, Commissioners? Any  
3 debate? Any discussion? Hearing none, all those in favor, let  
4 it be known by the sign of aye. All those opposed, like sign.  
5 Show it done.

6 Commissioner Edgar.

7 COMMISSIONER EDGAR: Okay. Then I believe that  
8 brings us to the FPL issues, and I would like staff, please, to  
9 speak to Issues 2A and 2B, noting that there were some issues  
10 at hearing on those.

11 MR. BREMAN: Correct. Commissioners, 2A is where  
12 staff explains the tension between OPC and FPL. OPC raised a  
13 concern about the adequacy of FPL's internal memoranda on  
14 single source and sole source contracts to justify its decision  
15 not to seek competitive bids. OPC recommended three options  
16 and those options are: Deny FPL recovery of the equity portion  
17 associated with a certain contract for the Levy project, the  
18 Option B was to deny 10 percent of the equity portion  
19 associated with that contract, and Option C is to require  
20 additional documentation and support on a going-forward basis.  
21 And staff recommends that based on the record evidence that  
22 Option C is the most appropriate action today.

23 CHAIRMAN CARTER: Commissioner Skop.

24 COMMISSIONER SKOP: Thank you, Mr. Chairman. I  
25 concur with the staff recommendation. And I guess if

1 Commissioner Edgar would make the motion, I'd be comfortable  
2 approving that.

3 CHAIRMAN CARTER: Commissioner Edgar.

4 COMMISSIONER EDGAR: Mr. Chairman, with that further  
5 discussion from staff, I have no questions on the remaining  
6 issues, so I would be prepared to take up the FPL issues as a  
7 group, if indeed we are in that posture.

8 CHAIRMAN CARTER: We are -- any questions,  
9 Commissioners?

10 Commissioner Argenziano, you're recognized.

11 COMMISSIONER ARGENZIANO: Yes. For the record, could  
12 you go into a little more detail for me on OPC's objection?

13 MR. BREMAN: OPC's objections with respect to  
14 Progress on Issue 13?

15 COMMISSIONER ARGENZIANO: Yes.

16 MR. BREMAN: Okay.

17 CHAIRMAN CARTER: No, not on Issue 13.

18 COMMISSIONER ARGENZIANO: No. No.

19 COMMISSIONER EDGAR: 2A and 2B, I think.

20 CHAIRMAN CARTER: Right. FPL.

21 COMMISSIONER EDGAR: Yeah. Back to maybe the sole  
22 source issue, a little more detail.

23 COMMISSIONER ARGENZIANO: Which are not in my book,  
24 Larry.

25 Thank you. Got it.

1           CHAIRMAN CARTER: I just had them to break it down to  
2 a sheet. Sorry about that, Commissioners. It kind of throws  
3 everybody off.

4           MR. BREMAN: OPC reviewed the single source and sole  
5 source contract justification memorandum that FPL relies on to  
6 affirm or deny the decision not to pursue competitive bidding  
7 for a particular service or asset. One of the things that was  
8 shown in the record was that OPC looked at the four corners of  
9 that document and asked the question whether that document  
10 completely explained everything needed to make a decision, and  
11 OPC appropriately concluded that it does not and brought that  
12 to your attention. They then posed the concern that perhaps  
13 FPL isn't adhering to its own internal process. One of the  
14 problems is that there's a lot of information exchanged in the  
15 decision-making process, and the standard for prudence is what,  
16 what a reasonable utility manager would have done in light of  
17 the conditions and circumstances which were known or reasonably  
18 should have been known at the time the decision is made. And  
19 what the record shows is that these internal memorandums are  
20 summary in nature and don't provide adequate detail to fully  
21 explain to someone like myself who doesn't build nuclear power  
22 plants why the decision was made the way it was made.

23           There was a lot of discovery and OPC appropriately  
24 pointed out that all the documents that FPL had were asked for  
25 and presented to you in this proceeding, and that's why

1 additional documentation is appropriate because this is a cost  
2 recovery mechanism, it is an alternative cost recovery  
3 mechanism. And so those concerns about adequacy of the  
4 documentation is appropriate.

5 The company did defend its position that additional  
6 information was used and relied on during the deliberation of  
7 whether or not they should single source or sole source.

8 COMMISSIONER ARGENZIANO: And if I, if I can, Mr.  
9 Chairman.

10 CHAIRMAN CARTER: You're recognized.

11 COMMISSIONER ARGENZIANO: For people, for people that  
12 would be listening in and if I was on the outside listening in,  
13 I would think that, oh, my God, you know, you're not  
14 outbidding. And in cases, in certain cases there are no, there  
15 are no ways to bid. There's only maybe one source to get it  
16 from, and that needs to be understood. Because anybody  
17 listening in is going to say, my God, you didn't allow bidding.  
18 And under certain circumstances that is okay with proper  
19 documentation and I think that's what we're getting to.

20 MR. BREMAN: Yes, ma'am.

21 COMMISSIONER EDGAR: And I noticed that in OPC's  
22 comments when I was looking at this yesterday, they said at a  
23 minimum what they had hoped that the Commission should place  
24 FPL on notice that the Commission will require a more rigorous  
25 demonstration that competitive bidding is infeasible and that

1 the costs of a single or sole source contract are reasonable.  
2 So I think that's duly noted. And I just wanted to say that  
3 for anybody looking from the outside in because it's very  
4 confusing that sometimes there are no places to get competitive  
5 bids. And in those case what we need and what OPC is asking  
6 for is, is rigorous detail information, and I think that's,  
7 that's very appropriate. Thank you.

8 CHAIRMAN CARTER: Thank you, Commissioner. I  
9 appreciate that because we get so into the process because we  
10 went over and over again what all of the documentation and we  
11 kind of, by the time we get here, we just kind of, it's  
12 appropriate to kind of break it down. But there was a  
13 tremendous amount of discussion and review of documentation and  
14 witnesses on the stand and all. And I appreciate you bringing  
15 that so that folks will understand this is not just a cursory  
16 review per se, is that we've gone through the process.

17 Commissioner Skop, you're recognized, sir.

18 COMMISSIONER SKOP: Thank you, Mr. Chairman. And  
19 just to follow up on Commissioner Argenziano's line of  
20 questioning to staff.

21 In staff's review and at hearing basically it was  
22 demonstrated that FPL followed its internal procedures in terms  
23 of the sole source justification sheet that was attached; is  
24 that correct?

25 MR. BREMAN: Yes.

1           COMMISSIONER SKOP: And in selecting a sole source it  
2 did not depart from any statutory provision or Commission rule;  
3 is that correct?

4           MR. BREMAN: Correct.

5           COMMISSIONER SKOP: Okay. And to Commissioner  
6 Argenziano's point, I wholeheartedly agree there's not very  
7 much remnants of an industrial nuclear base in the United  
8 States, so it is difficult when you're dealing with nuclear  
9 type vendors. There's not, it's not like going to Albertson's  
10 and having a lot of choice of vegetables. You have to pretty  
11 much take what you're given subject to prudence and in trying  
12 to make the best decisions. And I think that from my  
13 perspective the only thing that I saw that might have been,  
14 been able to have been done a little bit better was a little  
15 additional explanation, which I think OPC has pointed out.

16           But, again, I think, as was explained at hearing, FPL  
17 testified that it was understood through management what things  
18 were meant by what was on the paper and they followed the  
19 procedure. It's just the explanation. Some of it could have  
20 been a little bit more lengthy than it was. But, again, I  
21 think that just a little bit more attention to detail in  
22 explaining things for, for, on a forward-going basis, I think,  
23 would do much to address the concerns I heard. But it seemed  
24 to me that FPL followed their procedures and I'm comfortable  
25 moving forward.

1 CHAIRMAN CARTER: Thank you, Commissioner.  
2 Commissioners, anything further?

3 Commissioner Edgar, you're recognized.

4 COMMISSIONER EDGAR: Thank you, Mr. Chairman. I  
5 would make a motion in favor of the staff recommendation for  
6 the remainder of the issues, which are FPL Issues 2A through  
7 12, and also note that that includes the oral modifications  
8 that staff had given us for these issues and, of course, the  
9 prior ones as well.

10 COMMISSIONER SKOP: Second.

11 CHAIRMAN CARTER: It's been moved and properly  
12 seconded. Commissioners, any further debate or discussion?

13 Hearing none, it's been moved and properly seconded.  
14 All those in favor, let it be known by the sign of aye.

15 (Unanimous affirmative vote.)

16 All those opposed, like sign. Show it done.

17 MS. BENNETT: Mr. -- I'm sorry, Mr. Chair.

18 CHAIRMAN CARTER: Yes, ma'am. Ms. Bennett, you're  
19 recognized.

20 MS. BENNETT: On the Progress issues there was a  
21 little confusion with staff. We want to clarify, was that also  
22 a vote for 13 and did that include the oral modification?

23 CHAIRMAN CARTER: Yes, it did.

24 COMMISSIONER EDGAR: That was my intent when I made  
25 the motion.

1           CHAIRMAN CARTER: That was -- I think I probably  
2 threw everyone off by mentioning it up-front, but it was in, it  
3 was inclusive in Commissioner Edgar's motion and we, we got it.  
4 It is. Thank you so kindly.

5           (Agenda Item 11 concluded.)

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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 20<sup>th</sup> day of October,

2008.

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