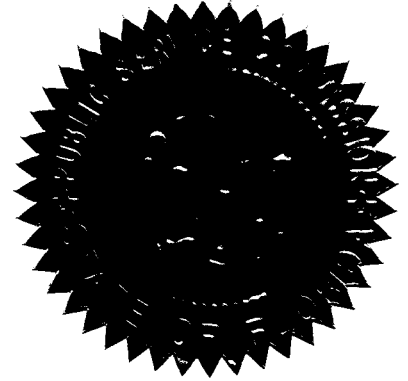


BEFORE THE  
FLORIDA PUBLIC SERVICE COMMISSION

DOCKET NO. 080001-EI

IN THE MATTER OF:

FUEL AND PURCHASED POWER COST RECOVERY  
CLAUSE WITH GENERATING PERFORMANCE  
INCENTIVE FACTOR.



PROCEEDINGS:                   AGENDA CONFERENCE  
ITEM NO. 10

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

DATE:                            Tuesday, December 16, 2008

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

REPORTED BY:                   LINDA BOLES, RPR, CRR  
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2                   MICHAEL COOKE, GENERAL COUNSEL, LISA BENNETT,  
3 ESQUIRE, JIM BREMAN, ELISABETH DRAPER, CAYCE HINTON and CONNIE  
4 KUMMER, representing the Florida Public Service Commission  
5 Staff.

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

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CHAIRMAN CARTER: We are back on the record. Staff, you're recognized.

MR. BREMAN: Thank you. Chairman, Commissioners, I'm Jim Breman with your staff. Item 10 addresses whether FPL should be responsible for the additional fuel costs that occurred in the spring of 2006 when Turkey Point Unit 3 was not available due to a hole being drilled in the pressurized piping. The resolution of the issue was deferred while investigations were active and FPL was allowed to recover the additional fuel costs subject to refund with interest.

The investigative efforts were concluded earlier this year and the matter was included in this year's fuel docket Prehearing Order as Issue 13C. Testimony was sponsored by FPL and OPC. The intervenors requested opportunity to file posthearing briefs on Issue 13C. FPL, OPC, the Attorney General and AARP filed posthearing briefs. Based on a review of the record and the posthearing briefs, staff recommends the Commission find that FPL did not carry its burden of proof and that FPL should be responsible for the additional fuel costs.

Staff also recommends FPL implement the refund plus interest in the form of a one-time credit beginning in the first billing cycle 30 days after the final order is issued. In Issue 2 staff recommends to keep the ongoing docket open.

1 Staff is ready to answer any questions you may have at this  
2 time.

3 CHAIRMAN CARTER: Commissioner Edgar, you're  
4 recognized.

5 COMMISSIONER EDGAR: Thank you, Mr. Chairman. I have  
6 just a couple of very brief questions. And the first -- and  
7 I'm looking at Page 19 of the recommendation, and about halfway  
8 down the top partial paragraph there is a sentence that reads,  
9 "The staff recommendation would be that the refund should be  
10 applied as a cents per kilowatt hour credit to customer bills  
11 in the month the refund is made." And I would ask you to  
12 elaborate or specify as to what that amount would, would be  
13 within whatever ranges, what the customers would actually see  
14 in a dollar or cent amount, recognizing that on the previous  
15 page it says that if it were to be spread across 12 months, it  
16 would be approximately six cents a month, and I'm just trying  
17 to compare amounts.

18 MS. DRAPER: Elisabeth Draper with the Commission  
19 staff. FPL provided information in the fuel hearing that if it  
20 is spread over 12 months, in 2009 it would be six cents on a  
21 1,000 kilowatt hour residential bill. If it's a one-time  
22 refund, six times 12 would be 72 cents. Since the average  
23 residential customer uses more than 1,000 kilowatt hours,  
24 approximately a dollar on the bill for a residential customer.

25 COMMISSIONER EDGAR: Okay. Thank you. So with that,

1 that further explanation, my second question is can you please  
2 discuss what would be the comparative advantage of the one-time  
3 credit versus the other option of incorporating it into the  
4 fuel hearing process?

5 MS. DRAPER: The advantage --

6 COMMISSIONER EDGAR: A refund, incorporating the  
7 refund amount into the fuel hearing process.

8 MS. DRAPER: The advantage to the customers would be  
9 that the one-time refund would be more timely. The customers  
10 have already paid for those costs. So if the Commission  
11 decides to go with the refund, staff believes it should be done  
12 sooner rather than later.

13 And the second reason for staff's thinking was that  
14 since the amount is rather small if it's spread over nine, over  
15 12 months, a one-time credit would provide a slightly larger  
16 amount to the customers.

17 COMMISSIONER EDGAR: Thank you. And I guess,  
18 Mr. Chairman, I would just make a very, very brief comment that  
19 on this narrow point as to how to apply the potential refund,  
20 I'm still weighing, and I welcome comments, of course, as to  
21 what would be the most advantageous to the customer and the  
22 process: A one-time refund, recognizing that it's a very small  
23 amount and would have, of course, processing charges, et  
24 cetera, that may be the way to go, or realizing that what we  
25 are looking at are costs for additional fuel that was required

1 because of an outage, the symmetry or, of including that in the  
2 same true-up process that we go through every year. And I'm  
3 still weighing on that, that more narrow point. Thank you, Mr.  
4 Chairman.

5 CHAIRMAN CARTER: Thank you.

6 Commissioner McMurrrian.

7 COMMISSIONER McMURRIAN: Thank you. And actually my  
8 questions are on that same wavelength and so I appreciate you  
9 bringing that up. The -- I guess I'll ask a few questions, but  
10 I've got some concerns about it too.

11 First let me just ask, how are refunds resulting from  
12 an overrecovery normally handled through the fuel clause?

13 MS. BENNETT: The last one we did in 2006 was handled  
14 on a monthly basis through the fuel clause.

15 COMMISSIONER McMURRIAN: And so it was included in  
16 sort of the amount that set, that we used to set the factor  
17 which is applied to customer bills, so it's included in that,  
18 the fuel charge on the bill, it's factored into that factor in  
19 this instance.

20 MS. BENNETT: Correct. Correct.

21 COMMISSIONER McMURRIAN: Okay. And I think you've  
22 already explained, I guess, why you chose this option as  
23 opposed to that normal way that we recover it from Commissioner  
24 Edgar's question. But let me also ask about the cost of the  
25 options and you've got the three listed there.

1           And I guess the first one is to me more consistent  
2 with how we normally refund money through the fuel clause. And  
3 I guess really the difference in one and three is number one  
4 would refund it over the 12-month period in '09, number three  
5 would refund it over the 12-month period in 2010. I  
6 personally, just to share my thoughts, I personally don't like  
7 waiting until 2010 because I think we recovered those costs a  
8 while back and I think we need to try to refund them more  
9 quickly than waiting all the way to 2010's recovery period.

10           But with respect to the second option of the one-time  
11 credit, and I heard what you said was the reason why you did,  
12 why you recommended that here, wouldn't that be more, a more  
13 costly way of refunding those dollars? Because I know when  
14 we've, and just to editorialize a little bit, I know when we've  
15 had other issues, and I know we didn't talk about this in the  
16 hearing so I know we're, we don't have a lot of information  
17 here, but I know when we've had other issues that have come up  
18 before us about line items on bills generally we get a lot of  
19 response from companies about how costly it is to put in a  
20 one-time line item on a bill. And especially in this case it  
21 would be put on one time and then it would be taken off the  
22 very next month. So could you speak to that? I have some  
23 concerns.

24           MR. BREMAN: Yes, ma'am, Commissioner, I'll start and  
25 then I'll hand it over to legal staff because we've been

1 pursuing that topical area.

2 Our recommendation makes a note that we didn't  
3 investigate this matter thoroughly at hearing, and intuitively  
4 there will be costs and it will be additional. And there has  
5 been dialogue and effort to try to address how much, if that  
6 particular number exists.

7 Is this where I hand it over?

8 CHAIRMAN CARTER: Mr. Cooke, you're recognized.

9 MR. COOKE: It presents a procedural question because  
10 we have a hearing record that is closed. But we did anticipate  
11 that this question may come up and we were able to obtain  
12 information from the company what the estimate is.

13 In order for you to hear that from us, we would  
14 need -- to protect the integrity of the hearing process it  
15 would be proper to reopen the record for the very limited  
16 purpose of hearing this number. We reached out to all of the  
17 parties and in effect have a stipulation where nobody objects  
18 to us reading this number in the form of two sentences into the  
19 record and then having the record immediately closed. The  
20 number is just a number that's reported to us from the company.  
21 That's all it is. And if we do this, you would use it for what  
22 it's worth.

23 COMMISSIONER McMURRIAN: Well, Mr. Chairman, just to  
24 clarify, I wasn't necessarily asking for the number. So if  
25 that -- I mean it really doesn't matter to me if we reopen it



1 and get the number. And, of course, we would need to compare  
2 the options. I don't know if just one number about one option  
3 would be it anyway. But I'm not necessarily asking that. It's  
4 fine if the Commission wants to go there. I guess I'm trying  
5 to get an idea of the cost comparison between are we still on  
6 shaky ground there as far as not having record evidence?  
7 Because it seems to me that it would be more costly to do the  
8 second option as opposed to the first, but I really don't know  
9 that.

10 MS. BENNETT: Staff can --

11 CHAIRMAN CARTER: Commissioner -- hang on a second.  
12 Hold on everybody. Just hold your places, boys and girls. Out  
13 of an abundance of caution, Commissioners, because this issue  
14 has come up, just for the limited purpose of just getting the  
15 number, because I would hate for us to talk around it and not  
16 talk about it when we -- just, just for the limited purpose of  
17 getting the number, if you need that number -- because if  
18 you're going to talk about quantifying the costs and things of  
19 that nature as it applies to that, I think we'll have to have  
20 the number on the record. I just -- I'm -- Commissioner Edgar.

21 COMMISSIONER EDGAR: Mr. Chairman, I do have one  
22 question on the same line but that I don't think requires that  
23 we go in that direction. And so if I could maybe get that out  
24 of the way and then see where, where we are.

25 CHAIRMAN CARTER: Mr. Cooke, how far can we go up --

1 I mean, I'm all in favor of putting my nose on the line without  
2 crossing it, but how far can we go without -- I mean, obviously  
3 people's due process rights and considerations of the parties  
4 are at risk here and we don't really want to go beyond that.  
5 And we don't want, we don't want to have a distinction without  
6 a difference either. We don't want to try to go about it  
7 without actually doing it the proper way.

8 MR. COOKE: Mr. Chairman, we're safe so far.

9 CHAIRMAN CARTER: So far?

10 MR. COOKE: I think that, I think that the --

11 CHAIRMAN CARTER: If we get crazy now, you'll raise  
12 your hand.

13 MR. COOKE: I will. And I think staff, staff can  
14 speak to its understanding of relative amounts based on what it  
15 knows. It's only if we try to introduce a number that, a  
16 factual number that's not in the record that, you know, we  
17 would want to probably take this safeguard. But for staff to  
18 say things like relatively speaking it would be more expensive  
19 to do the one-time versus the 12-month, that's the sort of  
20 thing that's perfectly fine for staff to address.

21 CHAIRMAN CARTER: Okay. Commissioners, without being  
22 rude is that I told Mr. Cooke if we get kind of far afield,  
23 he's going to raise his hand and just get our attention so we  
24 don't go down that road.

25 Commissioner McMurrian, you had the floor.

1           COMMISSIONER McMURRIAN: I think what I was trying to  
2 get at was the relative -- relatively speaking out of those  
3 three options which ones are more costly, ranking them in some  
4 way I guess, I suppose. That's what I was getting at. I  
5 wasn't really asking for the number. If the other  
6 Commissioners feel like they need that -- and I know  
7 Commissioner Edgar had a related question too and perhaps that  
8 will help us, so.

9           COMMISSIONER EDGAR: Actually I think my question was  
10 along the same line, but if I could maybe throw it out there so  
11 they can answer both, I think that might be helpful. And it is  
12 the comparative that I was trying to get to with no specific  
13 numbers. But I'm -- intuitively I am not understanding why the  
14 one-time might be more expensive than spreading over 12  
15 separate times. And so the way I would pose the question to  
16 our staff is realizing that in the past on other issues  
17 probably with this company and other companies we have had some  
18 one-time refund charges and we also, I know, have had some  
19 refunds that we have spread, directed be spread over 12 months,  
20 and so looking back at those past experiences, what I was going  
21 to ask, Mr. Chairman, is if the staff could give us a feel for  
22 in the past administratively if there was a comparison between  
23 the costs associated with a one-time versus a 12-month period?

24           CHAIRMAN CARTER: Staff, you're recognized. And  
25 also, Commissioners, on this line of questioning, I think

1 Commissioner McMurrian had completed her question. But if  
2 there are additional questions on this line of questioning,  
3 we'll recognize you. Staff, you're recognized, and then we'll  
4 go to Commissioner -- Commissioner Edgar, had you --

5 COMMISSIONER EDGAR: I finished.

6 CHAIRMAN CARTER: Then we'll go to Commissioner Skop.  
7 Staff, you're recognized.

8 MS. DRAPER: Just to rank them, it's based on staff's  
9 understanding, based on discussions with companies in the past  
10 that a one-time credit would be more costly to the company.  
11 Revising the fuel factors for 2009 would be the lesser cost  
12 option for the company.

13 MR. HINTON: And that's, that's the 12 months,  
14 spacing it out over 12 months. Basically that would just be  
15 revising the fuel factor that's already in place for the next  
16 12 months, making one revision --

17 CHAIRMAN EDGAR: I'm sorry. I didn't understand  
18 that. I apologize. Could we just hear it one more time on the  
19 exact same point?

20 MS. DRAPER: I'm sorry if I wasn't clear.

21 COMMISSIONER EDGAR: That's all right. It's probably  
22 me. And I hope, Commissioner McMurrian, that this is kind of  
23 along the same line that you, that you were headed.

24 Okay. So, so my question was the one-time versus  
25 over 12 months, 12-time assessment of refund.

1 MS. DRAPER: One-time would be more costly to the  
2 company to implement and administer.

3 COMMISSIONER EDGAR: Than 12 months.

4 MS. DRAPER: Than 12 months.

5 COMMISSIONER EDGAR: Why?

6 MS. DRAPER: I believe that the one-time refund would  
7 require FPL to revise its billing system, to do some  
8 programming to calculate the refund and put a line item on the  
9 bill that showed a refund.

10 COMMISSIONER EDGAR: But wouldn't that need to be  
11 done for 12 months?

12 MS. DRAPER: For 12 months FPL would revise the fuel  
13 factor. The fuel factor would be lowered and then customers  
14 would be billed the fuel factors like they always are.

15 MR. BREMAN: In other words, you wouldn't see it on  
16 the bill.

17 MR. HINTON: Commissioner, it does seem  
18 counterintuitive that if it's something that's going to be done  
19 for the entire year would seem to be more costly than something  
20 done just once. But that one-time event requires more billing  
21 changes and modifications than just being able to adjust the  
22 factor that's already in place for the next 12 months.

23 COMMISSIONER EDGAR: Okay. Thank you.

24 CHAIRMAN CARTER: Commissioner Skop.

25 COMMISSIONER SKOP: Thank you, Mr. Chairman.

1           Just on that discussion, again, I think that, you  
2 know, I can understand that. But I'm generally in support of  
3 staff's primary recommendation, the one-time refund, and I'll  
4 get into some rationale for that.

5           But just to our General Counsel, Mr. Cooke, certainly  
6 the Commission has the discretion to order a refund; is that  
7 correct?

8           MR. COOKE: That's correct.

9           COMMISSIONER SKOP: Okay. And certainly it was  
10 reasonably foreseeable for the utility to know that they may  
11 have to refund the money should the Commission determine that  
12 they were, that a refund was warranted; is that correct?

13          MR. COOKE: I agree with that.

14          COMMISSIONER SKOP: Okay. So in terms of what, how  
15 the refund is, is implemented, is cost really a relevant  
16 consideration that this Commission should consider in light of  
17 the fact that consumers have already paid for this money and  
18 FPL's been holding it should we choose to hold FPL accountable?

19          MR. COOKE: That's really a policy decision for you  
20 all as to who, who might bear that cost, et cetera.

21          COMMISSIONER SKOP: Okay. And I think Commissioner  
22 Argenziano wants to jump in here, but I have two additional  
23 questions. And --

24          CHAIRMAN CARTER: Along the same line?

25          COMMISSIONER SKOP: No. I think, I think -- well,

1 they're all in the same line. But I think Commissioner  
2 Argenziano is chomping at the bit, so --

3 CHAIRMAN CARTER: Commissioner Argenziano.

4 COMMISSIONER ARGENZIANO: No.

5 COMMISSIONER SKOP: Okay. Just I guess to me with  
6 respect to the one-time refund, again, I'm not persuaded by the  
7 cost or the level of effort that would need to go into that.  
8 What I'm looking at is although the one-time refund would not  
9 be a lot of money per customer, I guess it would be 76 cents,  
10 to me the money has been held, it's accrued interest. And if  
11 the Commission moves forward with withholding (phonetic)  
12 accountability in this issue, that the refund, a one-time  
13 refund would be warranted. And the staff has noted it would be  
14 issued 30 days after the final order from the first billing  
15 cycle, so that would provide some near-term economic relief in  
16 the new year right after the holiday. So I guess I would kind  
17 of view it as a, as a holiday present, should we go that  
18 direction. But in lieu of staggering it six cents per month  
19 over 12 months, I think that we just need to, if the Commission  
20 chooses to go in that direction, we just need to hold, I mean,  
21 to give the money back to the consumers. And I think that  
22 given the economic times it's not much, but, again, it would be  
23 something.

24 CHAIRMAN CARTER: Commissioner Argenziano.

25 COMMISSIONER ARGENZIANO: Thank you. I agree. Since

1 the company in my opinion failed to carry the burden for the,  
2 that it used prudence in the management of this temporary  
3 employee, why would you have the consumers wait for their  
4 money? And not even knowing how much cost, which I have a hard  
5 time understanding that, I think that, I really do. And I  
6 understand that maybe they have do this, but that's what  
7 happens when you make a mistake or you're not prudent in what  
8 you do. So I say that they should get their money back  
9 immediately and quickly and without regard to how much it costs  
10 the company at this point. The consumer is due back their  
11 money, and my, my desire would be to give it back all at once  
12 and right now. I mean, as soon as possible. Right now.

13 CHAIRMAN CARTER: I understood that.

14 Commissioner Skop, you're recognized.

15 COMMISSIONER SKOP: Thank you.

16 Just two quick follow-up questions somewhat along the  
17 same line but somewhat different. On Page 4 I'm concerned that  
18 there may be a typographical error in terms of the position of  
19 the parties for FIPUG and AARP. It says, "FPL." Is that a  
20 typo and would, in fact should that be FRF? Because I can't  
21 see Mr. --

22 CHAIRMAN CARTER: Where are you?

23 COMMISSIONER SKOP: Page 4.

24 CHAIRMAN CARTER: Where?

25 COMMISSIONER SKOP: Of the -- yeah. Page 4 on the



1 position, position of the parties for FIPUG it says it adopts  
2 FPL's position and AARP adopted FPL's position. And I just  
3 can't see Mr. Twomey doing that on this issue.

4 (Laughter.)

5 MS. BENNETT: Mr. --

6 CHAIRMAN CARTER: I think you've got a different  
7 version. Staff?

8 MS. BENNETT: The, the issue says, "Should customers  
9 or FPL be responsible?" AARP says FPL, FIPUG says FPL. That's  
10 their position, FPL should be responsible.

11 COMMISSIONER SKOP: Oh, "should." Okay. Maybe I  
12 misread it. Okay. My bad. I'm getting old. I had one of  
13 those over 40 moments.

14 (Laughter.)

15 And then I thought that Commissioner Edgar was going  
16 to mention it, she's on the, on the page and I thought she was  
17 going to do it, but she, actually the sentence right under it,  
18 but I had a similar concern that she shared. Where it says on  
19 Page 19 that only retail customers or records should receive a  
20 refund, that really wasn't elaborated on and I was just  
21 wondering why only retail customers as opposed to commercial  
22 customers?

23 MS. DRAPER: No. I'm differentiating between retail  
24 and wholesale.

25 COMMISSIONER SKOP: Okay. All right. Semantics.

1 MS. DRAPER: So it's all residential, commercial,  
2 industrial, retail customers.

3 COMMISSIONER SKOP: Fair enough then. And, like I  
4 say, with that, Mr. Chairman, I would support again moving  
5 forward with staff's primary recommendation at the appropriate  
6 time.

7 CHAIRMAN CARTER: Thank you. And Commissioner  
8 McMurrian.

9 COMMISSIONER McMURRIAN: Thank you. I just wanted to  
10 go back to what we were talking about. I just wanted to say if  
11 the Commission, you know, feels like it's important to do the  
12 one-time, it's not like I'm adamantly opposed to that.

13 I guess when I read it and given the things that have  
14 come up over the years about the one-time charge -- let me try  
15 this too. I think, I think some of the reason why the one-time  
16 charge, why I believe it probably is more expensive is that the  
17 one-time, one-time refund, not charge, the one-time refund  
18 would, would call for an additional line item being added to  
19 the bill for that 72 cents or up to a dollar; whereas, the fuel  
20 factor is already a line item on the bill. There wouldn't be,  
21 there wouldn't be an additional line item for the 12-month, the  
22 six cents over 12 months. It would already be included in that  
23 fuel item. Ms. Kummer, am I misspeaking or something?

24 MS. KUMMER: They would not necessarily have to do a  
25 separate line item on the bill. I believe most of the IOUs'

1 bills have a message block already on their bill and they could  
2 put a message in the message block rather than doing a line  
3 item. A line item on a bill is a very expensive proposition.  
4 I don't think that staff really contemplated a separate line  
5 item as much as a notation on the bill somewhere that there was  
6 a refund associated with this.

7 COMMISSIONER McMURRIAN: Okay. I appreciate that.  
8 Because I read it to mean, especially with the explanation of  
9 the docket number and all of that that's listed there under  
10 that item, I took it to mean that it would be a separate line  
11 item there. So anyway -- but my point was if, if the  
12 Commission wants to do that, I'm not opposed to it. I do --  
13 it's a point well-taken that the customers would get their  
14 money back faster that way. And I have that same concern with  
15 that third option which wouldn't even put it in place until  
16 2010, and I agree that we need to try to get the refund back to  
17 them sooner. And, Mr. Chairman, at the appropriate time I have  
18 some comments about sort of the overall case too, if --

19 CHAIRMAN CARTER: Okay. I'll come back to you for  
20 that. We're just in our questions now, but I'll come back to  
21 you for comments.

22 Commissioners, any further questions? Commissioner  
23 Skop, you're recognized.

24 COMMISSIONER SKOP: Thank you, Mr. Chairman. I just  
25 forgot to mention before, I'd like to commend staff for their

1 work on this. We spent a significant amount of time at the  
2 hearing and staff's recommendation incorporated the  
3 recommendation as well as the positions of the parties, and I  
4 appreciate all of staff's work on this issue.

5 CHAIRMAN CARTER: Thank you. Commissioners?

6 COMMISSIONER ARGENZIANO: Well done. Well done.

7 CHAIRMAN CARTER: Okay. Commissioner McMurrian for  
8 comments. We're in comments.

9 COMMISSIONER McMURRIAN: Thank you, Chairman. And I  
10 guess I just wanted to share some of, some of my reaction on  
11 this issue. And my initial reaction to 13C was, you know, as  
12 the issue was framed it was "Should customers or FPL be  
13 responsible?" And I guess my initial reaction was that the  
14 person that drilled the hole should be responsible and I highly  
15 doubt that anybody disagrees with that. But despite that  
16 responsibility it's next to impossible, of course, to, to  
17 expect that anything close to \$6.2 million could be recovered  
18 from that person. So, of course, we went, we gathered evidence  
19 about whether FPL's actions and those related expenditures were  
20 prudent, and I agree with staff that FPL did not meet that  
21 burden of proof and that the replacement fuel costs should be  
22 refunded, as we've been talking about.

23 But I had a few other thoughts that I wanted to get  
24 out while we were talking about this and say, first off, that I  
25 have no reason not to believe Witness Jones when he suggested

1 that the FPL screening procedures were considered an industry  
2 model. I also don't doubt that the NRC guidelines and FPL's  
3 own procedures have worked well for years to safely guard those  
4 plants. And it also appears that the company handled the  
5 situation well once the problem was discovered. I believe that  
6 that's all true based on the evidence we heard. Still the fact  
7 remains that this person made it through the screening no  
8 matter how rigorous. They were granted an unescorted access  
9 and they committed an act of vandalism that was very costly and  
10 could have degraded the safety of the plant despite all the  
11 other people that work every day to make sure that that plant  
12 operates safely.

13 I would ask FPL to seriously reexamine its guidelines  
14 and procedures to see if there are improvements that could be  
15 made to do everything within reason to prevent granting the  
16 wrong person unescorted access in the future. Given the nature  
17 of the operations at these plants and the importance of  
18 providing the public with the utmost confidence in your  
19 management of these units, I think such reexamination is  
20 warranted. And I further encourage you to share those benefits  
21 of your experience with this case and any changes in procedures  
22 that might come from it with others in the industry as well as  
23 the NRC. And I appreciate you letting me say that, Chairman.  
24 It's just something I've been thinking about throughout the  
25 case that I was concerned about their need to look at this a

1 little bit closer. And I'm not saying that they need to change  
2 anything, but it would appear that they need to at least take a  
3 closer look.

4 CHAIRMAN CARTER: Thank you.

5 Commissioner Argenziano.

6 COMMISSIONER ARGENZIANO: And to that point, and  
7 excuse me because it's off the cuff, but it's what I thought of  
8 all along also. You know, you cannot, you cannot sometimes  
9 predict the actions of an individual. It's very, very  
10 difficult to do that or to, you know, to look at it and say out  
11 of which employee do I have here -- you know, it's very hard  
12 for a company to do that. But we're talking about a plant and  
13 we're talking about building more nuclear power plants where  
14 you want the consumers and the citizens not only in the State  
15 of Florida but throughout the United States to have confidence.  
16 And I think that it is the company's responsibility to help  
17 provide the utmost confidence to the consumers when we're  
18 talking about nuclear power plants or energy plants that are so  
19 crucial to everyday life and our economy and so on and so on.  
20 But saying that, understanding that the company cannot always  
21 predict, but at the same time when you have a background that  
22 is somewhat questionable, that even though, and you heard me  
23 throughout the proceedings basically saying, you know, a lot of  
24 those things were thrown out, it makes it very difficult, even  
25 due process for an individual.

1           But I'm, I'm with Commissioner McMurrian on the fact  
2 that the company really needs to take a second look and a much  
3 more diligent, serious look at who they allow to be unescorted  
4 in certain areas. And I think they will after this. I think  
5 they have to.

6           So in saying that, understanding that you can't  
7 always predict and it makes it very difficult for a company to  
8 say, you know, which one, but look at a little closer. And  
9 even though due process is sometimes at stake, and it was for  
10 me going back and forth with this, there are indicators that  
11 may say, you know, we just better be careful because the  
12 greater -- I guess the greater thing that you get out of this  
13 is making sure that the people are confident that our plants  
14 are safe and that we don't put people in places that could do  
15 harm as this, as this happened. So with that, I, I appreciate  
16 staff's efforts on this case too.

17           CHAIRMAN CARTER: Thank you.

18           Commissioner Skop for comments.

19           COMMISSIONER SKOP: Thank you, Mr. Chairman.

20           And, again, I concur with Commissioner McMurrian and  
21 Commissioner Argenziano's comments. There's always room for  
22 improvement. You know, had FPL come in and expressed some  
23 responsibility in terms of things that they could have done  
24 better, I might have felt differently about this case. But,  
25 again, the, the failure to carry the burden combined with the,

1 you know, having control of who comes into your plant and is  
2 allowed access to restricted areas -- again, not to rehash what  
3 Commissioner McMurrian and Commissioner Argenziano mentioned  
4 about the person of interest, but to me an additional concern,  
5 and I think it was properly raised, was that the second  
6 co-worker, if he had reported what the person of interest had  
7 told him immediately, as he was trained to do by FPL, the  
8 drilled hole could have been discovered and repaired during the  
9 planned outage, which would have prevented the need to purchase  
10 the purchased power altogether. So to me this was somewhat  
11 avoidable. There seemed to be, you know, the bad actor, but  
12 also too other employees that could have mitigated the damage.  
13 And, you know, it's very easy to come before the Commission and  
14 just merely try and seek recovery and shed risk to the  
15 ratepayers. But in this instance I feel that having a direct  
16 hand by FPL in the training and the discretion to grant or deny  
17 access, FPL was significantly or had some responsibility for  
18 what happened here. So, again, there's always room for  
19 improvement, and I would ask FPL to take a critical look at  
20 lessons learned and what might be able to prevent any  
21 reoccurrence of this nature on a forward-going basis.

22 CHAIRMAN CARTER: Thank you.

23 Commissioner Edgar.

24 COMMISSIONER EDGAR: Thank you, Mr. Chairman.

25 Very briefly, you know, we spent a lot of time on



1 this issue at hearing and partly because it did raise so many  
2 related, maybe not directly related, on point to the hearing,  
3 but yet many related issues. And I know I for one learned a  
4 lot about, more about some of the processes that are in place  
5 by both the utility and the NRC, so that was helpful. It's a  
6 little staggering, of course, when you think about how much  
7 time we spent on this issue in comparison to the overall  
8 amounts that were in discussion for the hearing.

9           However, I would like to make the comment that when  
10 I -- you know, our mission, of course, as an agency is safety,  
11 reliability and affordability, and I do believe that the safety  
12 of the customers and the workers and the area is the first  
13 priority for the utilities in this state and I just would like  
14 to recognize that fact. However, I also believe that with the  
15 very unique facts of this situation as presented to us at  
16 hearing, that to refund this specific amount to the customers  
17 is the most appropriate decision for us to make and that's my  
18 thinking. And so, Mr. Chairman, I can offer a motion whenever  
19 you deem the appropriate time.

20           CHAIRMAN CARTER: Thank you. And, Commissioners,  
21 when we went down this road, I think all five of us recognized  
22 the significance of this issue. That's why we did the  
23 carve-out of Issue 13C. I was seeing Issue 13C in my sleep.  
24 And as Commissioner Argenziano said, there were some due  
25 process issues there in terms of, you know, how many times do

1 you punish a person for one offense, particularly when the  
2 disposition of that offense resulted in no criminal actions or  
3 charges in that? I see my colleague Commissioner McMurrian in  
4 terms of how she agonized over laying it out because there are  
5 some critical issues in terms of the company had the, they had  
6 the policies and procedures in place, they had the training in  
7 place, they had the manuals in place, they had the persons  
8 responsible in place. Maybe the NRC does need to look at this  
9 from a standpoint to where, let's take it to another level to  
10 where we go above and beyond the call of duty. I do -- and I  
11 echo the comments of the four of you because we set this issue  
12 out because it was important, it was significant. And as  
13 Commissioner Argenziano always says, I'm quoting you now, she  
14 says, "I want to be fair to the consumers, but I want to be  
15 fair to the companies too." And that's our charge is the  
16 balancing act.

17           And I think in this case here we did the right thing  
18 in terms of carving this out. And you're right, Commissioner  
19 Edgar, we did spend a lot more time on this issue than we did  
20 the overall, but it was an important enough issue. If we're  
21 going to build nuclear power plants in Florida, and we are, and  
22 as we proceed further, we by our actions here today would show  
23 the entire country that we've gone a step above.

24           In addition to having extraordinary protections for  
25 safety and all, make recommendations to the NRC in terms of how

1 to do that. And a lot of states are looking to Florida, and I  
2 think that this shows this. And in a minute, Commissioner  
3 Edgar, I'll recognize you for a motion. As we do this, I think  
4 that based upon the facts presented to us in this case staff is  
5 correct that the burden of proof was not met. And as such, as  
6 I said, we did agonize a lot over this case. We did give  
7 everyone a proper opportunity, the Intervenors, the company, we  
8 listened to the witnesses, we looked at the manuals, we looked  
9 at the, some redacted information from the FBI and all like  
10 that. And I think that this is -- the staff has done a great  
11 job in codifying the issues that we identified and the concerns  
12 that we have. And with that, Commissioner Edgar, you're  
13 recognized for a motion.

14 COMMISSIONER EDGAR: Thank you, Mr. Chairman.

15 In recognition of the record in this case and the  
16 discussion that we have had here at the bench today, I would  
17 make a motion in favor of the staff recommendation on all  
18 issues for Item 10.

19 COMMISSIONER SKOP: Second.

20 CHAIRMAN CARTER: Before going further, on the  
21 payment schedule --

22 COMMISSIONER EDGAR: Which, which would include the  
23 one-time payment schedule as we have discussed, one, excuse me,  
24 one-time refund of the full amount to customers.

25 COMMISSIONER SKOP: Second.

1           CHAIRMAN CARTER: Okay. Commissioners, any questions  
2 or concerns? Any further debate? Hearing none, all those in  
3 favor, let it be known by the sign of aye.

4           (Unanimous affirmative vote.)

5           All those opposed, like sign. Show it done. Thank  
6 you. Thank you, staff. Outstanding.

7           (Agenda Item 10 concluded.)

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1 STATE OF FLORIDA )  
 : CERTIFICATE OF REPORTER  
2 COUNTY OF LEON )

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

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

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

12 DATED THIS 19<sup>th</sup> day of December,  
13 2008.

14

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