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BEFORE THE  
FLORIDA PUBLIC SERVICE COMMISSION

In the Matter of:

DOCKET NO. 100437-EI

EXAMINATION OF THE OUTAGE AND  
REPLACEMENT FUEL/POWER COSTS  
ASSOCIATED WITH THE CR3 STEAM  
GENERATOR REPLACEMENT PROJECT,  
BY PROGRESS ENERGY FLORIDA, INC.

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PROCEEDINGS: STATUS CONFERENCE

COMMISSIONER  
PARTICIPATING: COMMISSIONER EDUARDO E. BALBIS  
PREHEARING OFFICER

DATE: Monday, August 8, 2011

TIME: Commenced at 9:30 a.m.  
Concluded at 10:28 a.m.

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

REPORTED BY: JANE FAUROT, RPR  
Official FPSC Reporter  
(850) 413-6732

FLORIDA PUBLIC SERVICE COMMISSION

DOCUMENT NUMBER-DATE

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4 Tower, Washington D.C., 20007 appearing on behalf of  
5 White Springs Agricultural Chemicals, Inc. d/b/a PSC  
6 PHOSPHATES.

7 JON C. MOYLE, JR., ESQUIRE, Keefe, Anchors,  
8 Gordon and Moyle Law Firm, 118 North Gadsden Street,  
9 Tallahassee, Florida 32301, appearing on behalf of  
10 Florida Industrial Power Users Group.

11 CHARLES REHWINKEL, ESQUIRE, Office of Public  
12 Counsel, c/o The Florida Legislature, 111 W. Madison  
13 St., Room 812, Tallahassee, Florida 32399-1400,  
14 appearing on behalf of the Citizens of Florida.

15 JOHN T. BURNETT, ESQUIRE, Progress Energy  
16 Service Co., LLC, Post Office Box 14042, St. Petersburg,  
17 Florida 33733-4042, appearing on behalf of Progress  
18 Energy Service Co., LLC.

19 LISA BENNETT, ESQUIRE, ANNA NORRIS, ESQUIRE,  
20 and KEINO YOUNG, ESQUIRE, FPSC General Counsel's Office,  
21 2540 Shumard Oak Boulevard, Tallahassee, Florida  
22 32399-0850, appearing on behalf of the Florida Public  
23 Service Commission Staff.

24

25

1 APPEARANCES (Continued):

2 MARY ANNE HELTON, Deputy General  
3 Counsel, Florida Public Service Commission, 2540 Shumard  
4 Oak Boulevard, Tallahassee, Florida 32399-0850, Advisor  
5 to the Florida Public Service Commission.  
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## P R O C E E D I N G S

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**COMMISSIONER BALBIS:** Good morning, everyone.  
I'd like to call this status conference of August 8th to order.

Staff, has this meeting been noticed?

**MS. BENNETT:** Yes, it has, Commissioner.

**COMMISSIONER BALBIS:** Thank you.

And now I'd like to take appearances starting with Progress Energy Florida.

**MR. BURNETT:** Good morning, sir. John Burnett for Progress Energy Florida.

**MR. REHWINKEL:** Charles Rehwinkel, Public Counsel's Office.

**MR. MOYLE:** Jon Moyle on behalf of the Florida Industrial Power Users Group, FIPUG.

**MR. BREW:** Good morning, Commissioner. I'm James Brew for PCS Phosphate.

**MS. BENNETT:** And, Commissioner, I did speak with George Cavros a few minutes ago, and he will not be attending this morning. He does take the position of the intervenors in this status conference.

And Lisa Bennett, Anna Norris, and Keino Young on behalf of staff.

**MS. HELTON:** And Mary Anne Helton, advisor to the Commission.

1                   **COMMISSIONER BALBIS:** Thank you.

2                   As everyone may recall, at the last status  
3 conference the parties suggested they be given  
4 additional time to meet and discuss potential dates,  
5 timing, and also potential scopes for dockets or  
6 upcoming hearings. Since that time, I see that Progress  
7 has filed a second motion establishing case schedule,  
8 and several of the parties have provided responses to  
9 that. I will like to point out that my goal for, one of  
10 the goals for today is for me to speak in clear concise  
11 sentences, because in Progress' motion they did a good  
12 job of quoting what I said last time, and indicated that  
13 I tend to speak in long run-on sentences. So if that  
14 was your point, I took it well.

15                   The other thing I would like to accomplish  
16 today is, again, provide an opportunity for the parties  
17 to state a response, again, to Progress' second motion  
18 to continue the discussion on potential hearing dates.  
19 And with that, I'd like to start with staff.

20                   **MS. BENNETT:** Commissioner, I read the motions  
21 and the responses of the parties. Staff has a little  
22 bit of a different view of this docket right now. First  
23 of all, we think that maintaining the schedule that you  
24 established, I believe it was in your February order,  
25 would be appropriate. Also, we think that the first

1 avenue of inquiry, the first piece of the puzzle is  
2 actually CR-3's first delamination event. And what we  
3 are suggesting is that the events and decisions leading  
4 up to the first delamination event, those have already  
5 occurred, so the Commission could actually make a  
6 prudence finding on those decisions leading up to the  
7 first delamination event. And then the second  
8 delamination event would be those decisions and  
9 contracts that Progress has entered into leading up to  
10 the second delamination event, and probably, I'm told,  
11 CR-3 goes back on-line.

12 There is a third piece of the puzzle that we  
13 are looking at, a third issue that could -- or I don't  
14 want to call it an issue -- a third portion of this  
15 docket, and that is Progress' decision to continue to  
16 repair CR-3 versus decommissioning it. And it appears  
17 to staff at this point that Progress is continuing to  
18 repair and to not decommission the docket, or to not  
19 decommission Crystal River 3. So we think that is also  
20 ready for a hearing on the same hearing track that you  
21 set in your February order.

22 **COMMISSIONER BALBIS:** Okay. So to make sure  
23 that I understand you, you are recommending that for two  
24 separate hearing tracks, and the first hearing would  
25 have two phases to it. One, everything leading up to

1 the first delamination, and then another phase would be  
2 the decision to decommission -- or to repair versus  
3 decommission, is that correct?

4 **MS. BENNETT:** Actually, I was suggesting that  
5 the first phase be everything up to the first  
6 delamination and the decision to repair or retire. And  
7 then the second delamination event be a second phase to  
8 the hearing. But, again, the parties might want to  
9 speak to whether they are ready or not. But to staff it  
10 appears that Progress has already made that decision to  
11 go ahead and repair CR-3, and so that would be ripe for  
12 a decision in 2012.

13 **COMMISSIONER BALBIS:** And I have one question  
14 for Progress before I allow the other parties to speak.  
15 If we were to go in the direction that staff has  
16 recommended for the first hearing, and included in that  
17 is the decision to repair versus decommissioning, and  
18 you had stated at the previous status conference that  
19 Progress is continuing with the repairs and the design  
20 of the long-term repairs, would Progress continue with  
21 those activities prior to that hearing?

22 **MR. BURNETT:** Thank you, sir. I think the  
23 answer to your question is yes. And just to be clear,  
24 we are in the process right now of reaching out to  
25 potential contractors that would effectuate a repair,

1 really doing the engineering work to get a finer view of  
2 what the repair looks like, scope and schedule and how  
3 it goes. I anticipate -- and, again, there's no  
4 accuracy about this, this is just me taking my best  
5 guess at it -- that that will resolve itself within the  
6 next few months, and then we would be in a position,  
7 again, to relook at the finer numbers and schedule and  
8 to reaffirm the repair decision, or if we found  
9 something materially different, to look at that and make  
10 a decision on that.

11 So I think all of that probably moves toward  
12 this last quarter of the year, and would be ripe to be  
13 looked at officially in a hearing probably in the first  
14 quarter of 2012. But to Ms. Bennett's point earlier,  
15 there are things that have already happened, decisions  
16 that we have made before our senior management and our  
17 board of directors to get us to this point that are  
18 there. So I think the answer is yes, it could be done  
19 on the same track that Ms. Bennett is suggesting and go  
20 to a hearing at the same time.

21 **COMMISSIONER BALBIS:** Okay. So, again, you  
22 would continue with the design and the repairs whether  
23 or not we have a preliminary hearing, if you will. I  
24 know that is long-term, but a hearing scheduled for  
25 early next year.



1           **MR. BURNETT:** Yes, sir. We are on track to  
2 move that process to the ultimate resolution, so we are  
3 going to come to an ultimate resolution for the unit one  
4 way or the other. It's not really dependent on the  
5 schedule being set. But, again, I agree with Ms.  
6 Bennett, I think it makes sense to have that done on the  
7 front end.

8           **COMMISSIONER BALBIS:** Okay. And after  
9 answering my question now, I'd like to provide you with  
10 a few minutes to, again, state your position, if you  
11 have any additional comments, and then I would afford  
12 the other parties additional time for comments, as well.

13           **MR. BURNETT:** Thank you, Commissioner, and  
14 I'll be brief. Our objective in filing the motion and  
15 continuing to work with the parties is not to have  
16 anything set in stone as far as our way or no way. I  
17 think what Ms. Bennett said makes perfect sense, as  
18 well, and what we have just endeavored to do is try to  
19 find some logical way to go about this and some logical  
20 times.

21           In the responses to our second motion, I saw a  
22 lot of concern about prejudice and due process and  
23 timing and stuff. And, you know, there is nothing  
24 magical about those dates that we have suggested. We  
25 just tried to capture the kind of logical movement of

1 this and some of the efficiencies we have gained over  
2 time with some of the discovery. So we remain open to  
3 work out the best way to do this. And, you know,  
4 hearing what Ms. Bennett says, that makes a lot of  
5 sense. The timing, you know, it makes sense to maybe  
6 have more time on some things and less on others. So we  
7 are very flexible in the process. And we just wanted to  
8 put the motion out to have something to get it started,  
9 you know, to get the discussion started and issue that  
10 and have a strawman to work on. So we're happy to  
11 continue to work and answer any questions you have.

12 **COMMISSIONER BALBIS:** Thank you.

13 And, you know, obviously I, too, read the  
14 responses to Progress' second motion, and I think with  
15 Ms. Bennett sticking to the original time frame that was  
16 provided in January or February of this year hopefully  
17 alleviates a lot of the concerns from the parties. But  
18 with that I'll turn it over to the Office of Public  
19 Counsel.

20 **MS. BENNETT:** Commissioner Balbis, before Mr.  
21 Rehwinkel speaks, I want to make sure that I didn't  
22 confuse things with the phases. I was recommending that  
23 the repair or retire decision and up to the first  
24 delamination event, those are two phases, but they could  
25 be heard in 2012. And then the second phase, the second

1 delamination event would be a separate track, hearing  
2 track. But two hearing tracks, three phases.

3 **COMMISSIONER BALBIS:** That is my  
4 understanding, as well.

5 **MR. REHWINKEL:** Thank you, Commissioner  
6 Balbis. Charles Rehwinkel, Deputy Public Counsel.

7 And I'd like to start by, again, thanking you  
8 for your oversight of this docket. We believe that the  
9 seriousness and the gravity of it calls for the kind of  
10 oversight that you have given it, and we certainly  
11 appreciate that.

12 I also do appreciate the remarks of Progress  
13 and staff with respect to maintaining -- recommending  
14 that you maintain your existing schedule that is in your  
15 February order. I can tell from your remarks that you  
16 have reviewed all the pleadings, and so I won't repeat  
17 what's in those. Certainly, the Public Counsel's Office  
18 believes that this docket deserves a great deal of care  
19 and it deserves a timeline that affords the intervenors  
20 and the parties and especially the Commission the  
21 opportunity to fully look at an issue that is unlike any  
22 you have ever seen, and it deals with issues that this  
23 Commission has never addressed before. Specifically,  
24 civil engineering, structural engineering, and material  
25 sciences issues, and that goes to the first phase that

1 Ms. Bennett referred to when she referred to the events  
2 leading up to the October 2009 delamination. And I'm  
3 not trying to parse words, I will always try to use the  
4 October delamination and the March 2011 delamination,  
5 because there was a 1976 discovery of a delamination,  
6 and we believe that all those events are to be  
7 considered together.

8 We have no problem with the Commission taking  
9 a cut at looking at the issues leading up to the  
10 October 2009 delamination. But just to be clear,  
11 there's a lot of data and a lot of information that  
12 comes to light after that event that relates back to it,  
13 and it goes to the issue about what could have been  
14 known or should have been known prior to the  
15 delamination occurring.

16 So anything the Commission does with respect  
17 to looking at a certain time frame leading up to a  
18 certain day in 2009 should in no way preclude the taking  
19 of evidence that goes all the way up to today, because  
20 evidence is still coming in. We certainly agree that  
21 the actions that you would be looking at have all  
22 occurred in the past. And so in that regard, I think  
23 that is something that we could work within while  
24 certainly having full options with respect to discovery  
25 of documents and other matters that could be relevant to

1 what happened before October 2009.

2 Now, the only thing that has concerned me with  
3 respect to what staff has recommended to you is the  
4 simultaneous review of the decision to go repair or  
5 decommission after the March 2011 delamination  
6 discovery. That's a great concern of mine. I have  
7 probably, other than the folks inside of Progress,  
8 looked at more of the documents than anyone with respect  
9 to what occurred prior to October 2009 delamination. I  
10 have looked at some of the documents that have to do  
11 with the decision to repair. And the concern that I  
12 have is while they deal with the same structure and they  
13 deal with civil engineering issues, I can't imagine two  
14 issues that are completely more different.

15 The decision about repair or decommissioning  
16 is an ongoing decision that is bound up -- it is an  
17 announced decision, but Progress' report to you on  
18 June 27th had sufficient caveats in there that that  
19 decision is not final, and is based on a continual  
20 evaluation of ongoing circumstances.

21 One of the things that is not final is how  
22 insurance will be treated. On August 4th, I believe  
23 that was Thursday, CEO Bill Johnson was speaking to  
24 investors and he was asked how are the insurance  
25 negotiations going, and all he could say is that

1 everyone was working diligently. And that is a code  
2 word for they haven't resolved those things.

3 There is a repair estimate that is over a  
4 billion dollars on the high side, and there is insurance  
5 coverage of \$2.25 billion for that repair. But as we  
6 understand it from the public statements that have been  
7 made, there is no agreement on the scope of insurance  
8 coverage, and that's a significant factor that needs to  
9 be determined before we can evaluate whether it is  
10 prudent for Progress to continue on this process from  
11 the ratepayers' standpoint. And I believe Progress  
12 would concur that they have not finalized insurance  
13 negotiations nor have they probably even finalized the  
14 strategy that they are going to take in any discussions  
15 they have with Nuclear Electric Insurance Limited, or  
16 NEIL, their insurance company. So that is a big concern  
17 of ours.

18 There are others issues with respect to the  
19 design engineering not being complete, which I don't  
20 believe that it is. The construction scope has not been  
21 completed, and I believe that the construction and  
22 design engineering have to be in a substantially  
23 complete form in order for the licensing evaluation to  
24 be fully done. And the licensing is with respect to the  
25 NRC. All of those things are really still up in the

1 air. And our big concern is the Public Counsel's Office  
2 will be doing a Gulf Power rate case, an Aqua rate case,  
3 and a delamination case. And starting in the first  
4 quarter of 2012, a Florida Power and Light rate case,  
5 and maybe a Progress Energy rate case along with this  
6 delamination case. And then to put in the repair versus  
7 decommission phase on top of that, I believe, would be  
8 an enormous distraction based on facts that really  
9 aren't all in.

10 So I am offering to you our concern about  
11 that. I believe that while -- that it may not make  
12 sense to do that second phase along there, although I  
13 could go along with the first part of that  
14 recommendation. Thank you.

15 **COMMISSIONER BALBIS:** And, again, to be clear,  
16 that first part of the recommendation would be the  
17 events leading up to the first delamination and  
18 excluding the repair versus decommissioning?

19 **MR. REHWINKEL:** Yes. The October 2009  
20 delamination; yes, sir.

21 **COMMISSIONER BALBIS:** And just a couple of  
22 comments on the statements you have made. You mentioned  
23 that it would be an additional distraction or a  
24 distraction, so is it more of a distraction or a lack of  
25 resources to handle the additional workload?

1           **MR. REHWINKEL:** I think it's more of a  
2 distraction in the sense of the expertise that we would  
3 seek to acquire to testify will be fully devoted, in our  
4 view, to the effort to make our case on the prudence  
5 leading up to the October 2009 delamination. For those  
6 same resources to be used to be evaluating the  
7 repair/decommission option in tandem, I believe, would  
8 be a distraction for them and very unwieldy. It could  
9 also be a resource issue for our office. We certainly  
10 have not in our budgeting planning considered having to  
11 do this, this overlay of the repair versus decommission  
12 option.

13           And that has been characterized in the past as  
14 being a simple straightforward thing, but I believe it  
15 is very complicated, based on the insuring that I see  
16 that they will have to do and the licensing that will  
17 have to be done. So I think it's both, but I really  
18 think it's more of a diversion of attention and focus  
19 that would be necessary for that keystone prudence case  
20 that would be the October 2009 delamination case.

21           **COMMISSIONER BALBIS:** Okay. Thank you.

22           FIPUG.

23           **MR. MOYLE:** Good morning. Jon Moyle on behalf  
24 of FIPUG.

25           You at the outset had mentioned the run-on



1 sentences that may have appeared in the transcript. And  
2 from FIPUG's position, we weren't so bothered by the  
3 run-on sentences as much as the kind of signal that was  
4 being sent when Progress files their motion and says  
5 here is a second motion, you know, see transcript. It  
6 sort of signals a little bit some thought. And I want  
7 to just reemphasize a couple of points that we made in  
8 our response in opposition to the motion and bring up a  
9 couple of points.

10           You know, the resources of the consumers are,  
11 I think, more limited than that of the utility company,  
12 and we have a concern about breaking the case up into  
13 two or three parts. We think it's better for efficiency  
14 purposes and for judicial administration to try these  
15 issues which interrelate or are intertwined in one  
16 proceeding, and would continue to urge that that be  
17 looked at and pursued. And you kind of, you know, from  
18 my way of thinking it's like, well, what's the rush,  
19 what's the hurry? Why do we need to do this now as  
20 compared to later, to the extent facts are still  
21 developing.

22           You know, Progress is a very sophisticated  
23 company. They are not going to allow facts to go stale.  
24 You know, they can take -- they can take steps to  
25 preserve the testimony and, you know, in commercial

1 litigation or criminal law you will have cases being  
2 tried that events took place three or four years ago.  
3 So I don't know that it's unworkable to let this thing  
4 play out and then try the case, particularly when I  
5 don't see any downside to Progress. If the recovery of  
6 fuel was hanging out on this and they were not able to  
7 recover their fuel, or couldn't argue that they are able  
8 to recovery their fuel, then that would be a more  
9 compelling reason to me to say hurry up, hurry up, we  
10 need to make this decision.

11 But, you know, last year the fuel decision was  
12 decided in the fuel clause. FIPUG argued that you ought  
13 to not allow them to recover it until prudence was  
14 determined. That argument was not accepted. So they  
15 got all the money for the fuel, notwithstanding the fact  
16 that prudence hasn't been determined. So I guess FIPUG  
17 is kind of saying we don't understand the sort of the  
18 rush to bring these things forward, particularly when  
19 you consider the -- we would argue judicial inefficiency  
20 of having, as we said in your pleading, three sets of  
21 testimony, three sets of depositions. This is assuming  
22 their motion, which was to trifurcate, is what we are  
23 discussing, but three or two, it is more cumbersome and  
24 more costly than one.

25 And given the limited resources of consumers,

1 relatively speaking, and the fact that ultimately  
2 consumers are going to pick up the bill for Progress'  
3 litigation costs as part of the rates that they charge  
4 us, we would continue to urge that this situation move  
5 on down the road a little bit. Facts continue to  
6 develop. Mr. Rehwinkel mentioning the insurance issue,  
7 that is a very, very big issue.

8           And I will tell you from the standpoint of if  
9 we are getting into the repair versus replace -- I'm  
10 sorry, repair versus decommission or not move forward  
11 with the repairs, if that decision is going to be in  
12 play, it seems to me that you can't really have a full  
13 and frank discussion of that without the insurance issue  
14 also being in play. And I don't know whether you have  
15 jurisdiction over the insurance companies. Without  
16 getting too much into litigation strategy, I would sure  
17 think that efforts would be made to bring some insurance  
18 company here and have them raise their hand and talk  
19 about are they going to provide the money for the  
20 repair.

21           Because if they don't, if they say, well --  
22 you know, insurance companies will sometimes deny  
23 coverage, and if they say no, we are not going to do the  
24 2.25 billion, I don't think that money is going to come  
25 out of Progress' shareholders pockets. I think that's

1 going to be something that they will look to the  
2 ratepayers for, and say, well, the insurance company  
3 said it wasn't covered, or this, that, or the other,  
4 and, therefore you guys are on the hook for  
5 2.25 billion.

6 So if we are going to get into that issue, you  
7 know, I think it would be our intent to either try to  
8 bring the insurance company in as an indispensable  
9 party, or at least have them take the stand and have  
10 some clarity as to what the insurance situation is.  
11 Which, again, goes to the point about later rather than  
12 sooner. Because it seems that if we don't move forward  
13 quickly with this, the insurance issue will sort itself  
14 out as time goes on. There have been some preliminary  
15 negotiations and conversations, but it sounds like,  
16 based on what Mr. Johnson indicated, and it is a complex  
17 issue, but if that issue gets coupled up, then it seems  
18 to me that I don't think you can divorce the insurance  
19 coverage issue from the decision about does it make more  
20 sense to repair or to retire the unit.

21 So we would continue to urge that you consider  
22 not setting this for hearing, I guess, the first quarter  
23 may have been mentioned. If that's a quick time frame,  
24 particularly given the magnitude of the issues involved  
25 and the complexity and that there is no compelling

1 reason to set it sooner rather than later, particularly  
2 from the standpoint of Progress, and that, sure, they  
3 would like to have a decision to say, yes, that's a good  
4 decision to repair versus replace, because it gives them  
5 comfort and let's them sleep better at night. But, you  
6 know, they are in the regulated business, they have been  
7 in it a long time, they understand those decisions, and  
8 we think it makes more sense to handle all this at one  
9 time further down the road after the facts have been  
10 more fully developed.

11 So those are the comments. I guess if we  
12 start -- depending on how this goes, you know, I'll just  
13 hold any other comments for now. Thank you.

14 **COMMISSIONER BALBIS:** Okay. Thank you. And  
15 from PCS White Springs.

16 **MR. BREW:** Thank you, Commissioner.

17 I think from our perspective, for back of a  
18 letter phrase, the Phase I/Phase II discussion is  
19 somewhat baffling. Apart from timing considerations,  
20 you simply wouldn't break up the case that way. The  
21 March delamination was really just a failed effort to  
22 repair the first delamination, so from a factual  
23 litigation perspective, you would never want to bring  
24 the parties back to litigate twice the issues associated  
25 with the repair.

1           With respect to -- as indicated in our  
2 response on the motion, the decision on repair or retire  
3 the unit is a somewhat distinct question. But one of  
4 the key considerations that we would have, is at least  
5 from what we have been told, Progress is trying to get  
6 clarification on where they stand with respect to NEIL  
7 coverage now. And maybe they have better information  
8 today, but my understanding was they were trying to get  
9 real close on that over these next few weeks. That  
10 decision may impact the company's decision whether to  
11 repair or replace or retire.

12           And certainly if you take it from the  
13 perspective of if the company were to decide to retire  
14 the unit, would you want to have multiple phases to look  
15 at the delamination repair cost or would you want to  
16 deal with it all at once. We are as sensitive as anyone  
17 getting finality on this in terms of what are the  
18 ultimate rate consequences so we can all figure out how  
19 it falls and go forward. But we don't really see  
20 anything distinct in the March delamination in terms of  
21 how you would litigate the case.

22           The other thing to consider is we've talked a  
23 lot about how complex these issues are, and they are.  
24 And for lack of a better phrase, I probably have more  
25 experience on that than anybody else you can point to.

1 I have investigated prolonged outages at nuclear plants  
2 in other jurisdictions. I've looked at it from the  
3 complex considerations with cost overruns at nuclear  
4 plants on several occasions. This is going to be  
5 complex litigation. The company's proposed schedule to  
6 allow 60 days for intervenor testimony from the time  
7 they see the direct testimony is completely unworkable.  
8 So from my perspective, at a minimum we would look at  
9 the dates from the February ruling that you put out. I  
10 would suggest that probably once you see the company's  
11 direct testimony intervenors are going to require more  
12 time, but I would certainly consider the dates set out  
13 in the February order to be the minimal that's required.

14 Finally, from a magnitude perspective, we are  
15 already in the hundreds of millions of dollars, but the  
16 thing to remember is that the big dollars fall under  
17 what are being described as Phase II when insurance runs  
18 out and fuel costs start to spin up to \$300 million a  
19 year. And when we don't know who's going to be on the  
20 hook, depending on what happens with NEIL coverage,  
21 which is another billion dollars, and so making the  
22 distinction between Phase I and Phase II really doesn't  
23 make sense with respect to how the dollars fall out.

24 So our suggestion would be that while the  
25 Commission might want to consider the retire or repair

1 decision as a distinct issue, that in terms of the  
2 prudence issues associated with the problems with the  
3 containment structure and the rate consequences really  
4 at this point should stay together. Remember, there is  
5 nothing new in the company's motion from what we talked  
6 about in June or really what we knew back in February  
7 and March. They have made a tentative decision to go  
8 forward, as Mr. Rehwinkel mentioned, but that is very  
9 much up in the air based on both engineering, insurance  
10 coverage, and there may be other company issues which we  
11 don't have information on yet.

12 So our preference certainly would be to  
13 litigate all the prudence issues associated with the  
14 repair or the damage to the building and repair be done  
15 at one point. And we don't really see any benefit to  
16 the Commission in breaking those prudence issues up into  
17 two phases.

18 Thank you.

19 **COMMISSIONER BALBIS:** Thank you. And going  
20 back to one of your earlier points on the distinction  
21 between the -- or the combination of after the first  
22 delamination moving forward how the second delamination  
23 runs in, I believe that's in accordance with staff's  
24 recommendation of having the first hearing track cover  
25 just up to the first delamination, you know, agreeing



1 that everything from that point forward would be handled  
2 when the unit gets placed back into service. So is that  
3 consistent with what you initially stated in your  
4 remarks?

5 **MR. BREW:** Not really. I think what has been  
6 described as Phase II, which is what happens after the  
7 second delamination, I would think is properly brought  
8 into a litigation on one single issue. Certainly the  
9 rate consequences don't stop at March 14th. In fact,  
10 they become much more substantial as we head into 2012.  
11 At this point, it's is pretty much conceded that under  
12 the best repair scenario the unit won't be in service  
13 until sometime in 2014. And so the rate consequences  
14 both in terms of replacement fuel and potential fixed  
15 costs, depending on how the insurance shakes out, are  
16 going to be much more substantial than what has been  
17 defined as Phase I, based on the insurance coverage to  
18 date.

19 But the prudence issues in terms of the chain  
20 of events is going to be unbroken. It doesn't stop at  
21 March 14th. March 14th was simply a failed attempt to  
22 repair the 2009 delamination. The events are still  
23 unfolding, and so the only reason to break those up into  
24 separate phases would be to try to get to a judgment on  
25 the prudence issues while those issues are still

1 unfolding. And I think that would be inefficient.

2 **COMMISSIONER BALBIS:** Okay. Thank you.

3 **MS. BENNETT:** Commissioner Balbis, maybe I  
4 wasn't real clear with what I believe Phase I -- staff  
5 recommends Phase I should be are all the decisions that  
6 Progress made up to the first delamination event. And  
7 then after the decisions to repair, that would be the  
8 second phase. So I think we are speaking a little bit  
9 different language, Mr. Brew and I are.

10 **COMMISSIONER BALBIS:** Mr. Brew, is that clear  
11 to you or is there still confusion?

12 **MR. BREW:** No, I thought I understood staff.  
13 The problem is, as Mr. Rehwinkel pointed out, the  
14 parties are still trying to get through the documents  
15 and make sense of it. The company's actions with  
16 respect to its attempt that failed in March to repair  
17 the building -- I mean, one basic fact hasn't changed,  
18 the building hasn't changed. The damage and the efforts  
19 to repair it and how to decide it may be unfolding, but  
20 the building is still there with the same materials.  
21 And so trying to simply look at the Phase I issues as  
22 has been described is basically just trying to get a  
23 handle on part of the prudence decision that will in all  
24 likelihood govern part of the, if you will, liability  
25 decision that is primarily driven in Phase II. And I

1 think you will probably want to get a handle on that at  
2 one time.

3           From what we have described so far, the  
4 replacement fuel costs above insurance through 2011 is  
5 in the magnitude of 120 or \$130 million. That will  
6 become a five or \$600 million decision by 2015, or 2014.  
7 It's a billion dollar decision by 2015, if the repair  
8 slips, which is another issue to deal with. Because  
9 apart from everything else, the company's announcement  
10 that it thinks it can repair this unit by the spring of  
11 2014, we would have to deal with the issue of, well,  
12 what if that doesn't work? What if it slips another  
13 year?

14           So our suggestion would be that we actually  
15 spend some time on the track that I thought we were  
16 going to pursue, which is the parties to sit down and  
17 scope out the issues. One thing that will make this  
18 process much more efficient for the Commission and the  
19 parties is to the extent that the company's direct  
20 testimony can address all of the issues that the  
21 intervenors think need to be addressed, and that's what  
22 I thought we were trying to work through before.  
23 Otherwise, what typically happens, based on my  
24 experience, is you will see one set of testimony from  
25 the company in direct.

1           And based on what the intervenors file you  
2 will see a massive reply from the company on rebuttal,  
3 and the direct quickly becomes largely irrelevant. And  
4 so to the extent we can scope out the issues and they  
5 fully form the company's direct, the process can be  
6 accomplished much more efficiently. And I think we  
7 would be better off focusing on that, which is what we  
8 talked about over the last month, than to try to push  
9 for a schedule and break up the prudence phase into two  
10 prudence phases that don't really make sense because it  
11 is one unbroken chain of events from the time the  
12 building originally cracked.

13           And so what I was trying to suggest is that  
14 rather than focus on Phase I and Phase II, which is  
15 going to have the same link of prudence issues, you are  
16 just going to have much different dollars, that we focus  
17 on properly scoping the issues so we can sit down and  
18 litigate them all up close.

19           **MR. REHWINKEL:** Commissioner, may I be heard  
20 briefly?

21           **COMMISSIONER BALBIS:** Yes.

22           **MR. REHWINKEL:** I believe there is a lot of  
23 semantics involved in what we are talking about, and I  
24 think the last remarks that Mr. Brew made I fully concur  
25 in. In fact, we stated a very similar position in our

1 motion. I was somewhat kind of off my game, based on  
2 the scoping of the case that the staff recommended to  
3 you, with respect to bringing in this last decisional  
4 process into the core prudence determination. I fully  
5 agree with Mr. Brew that the parties ought to continue  
6 what we have been doing informally and in our  
7 discussions with staff in the informal meeting we had,  
8 which is to try to sit down and put issues to paper and  
9 see whether that gives us any clarity about how we ought  
10 to proceed.

11 My opening remarks to you agree that we could  
12 form up a case and do it in the timeframe that you  
13 established around that first or the October 2009  
14 delamination. I consider that kind of an artificial  
15 weigh station in the factual gathering, because you do  
16 have to go out and you have to look at what they are  
17 continuing to do and how they are assessing the building  
18 and what they are learning and what those things tell  
19 them about what they should have known, and you look at  
20 that repair process. I don't really think you have to  
21 have a discreet decision about what happened in March of  
22 2011.

23 So I really think it would be more useful for  
24 everyone to sit down and try to establish those facts,  
25 and we certainly have tried to do that with the company.

1 And that's why we mentioned our efforts to talk to the  
2 company in our motion. And the company has met with us  
3 in good faith and we have had some productive  
4 discussions along those lines, and I think that they  
5 could well continue and help the Commission make a  
6 decision, too.

7 **COMMISSIONER BALBIS:** Okay. Thank you. And I  
8 don't think there's any disagreement that the  
9 March 2011, or the second delamination can be grouped  
10 and everything leading up to when the unit is placed  
11 back in service, and I think staff's recommendation is  
12 everything leading up to the first or the October '09  
13 delamination, and there seems to be confusion as to what  
14 staff is proposing because you have mentioned concern  
15 about that, as well.

16 **MR. REHWINKEL:** We really don't want to -- we  
17 don't want to have a discovery -- we don't want to have  
18 a motion practice before you that's all about relevancy  
19 of information that we are seeking to gather or  
20 depositions that we want to take based on an  
21 October 2nd, 2009, date.

22 And that's why I think if we get the scope of  
23 the docket, and we find some sort of logical factual  
24 continuum that makes sense, that's probably a better way  
25 to scope the docket out than to go to what seems to be,

1 on its face, two cracks in the building. When really  
2 the materials and how they were evaluated in the  
3 engineering process and the construction process is  
4 really the relevant common thread that goes through all  
5 of these activities. So we don't want any artificial  
6 breakage in that.

7 That's really what I'm trying to get at is we  
8 want to make sure that there's no blockage of our  
9 ability to get information. And I think the company has  
10 indicated they don't want to do that to us, either. So  
11 getting the issues sorted out, I think, would make the  
12 process more efficient in the long run.

13 **COMMISSIONER BALBIS:** Okay. From Progress,  
14 any response?

15 **MR. BURNETT:** Yes. Thank you, Commissioner.  
16 Several issues I think I can help on. I'll start with  
17 the one that Mr. Rehwinkel just mentioned. We have no  
18 intention of bringing motion practice to you and trying  
19 to artificially bar anyone from taking discovery on  
20 anything in the case. In fact, we held discovery open  
21 since the first day.

22 One of the key issues that I'll mention on  
23 that is so far Mr. Rehwinkel has deposed one retiree we  
24 had to bring back, two contract employees that we  
25 brought for deposition, and one of the people that

1 actually he had considered talking to is now dead. We  
2 have over a million pages of documents in a room about  
3 the size of this portion of the hearing room that  
4 continues to fill up, and it will be overwhelming at  
5 some point. So, again, our intention is there is not  
6 any gotcha waiting here on the company's perspective.  
7 We are trying to manage a case that is admittedly large  
8 that spans over a decade. So I don't think that is a  
9 fear you have to deal with.

10 Another, and I will try to say this  
11 respectfully, red herring that was brought to your  
12 attention is this NEIL coverage. You know, the  
13 insurance company in our negotiations and our dealings  
14 with the insurance company has absolutely nothing to do  
15 with this proceeding. Our analysis, in fact, as to  
16 whether it made more sense from a qualitative and  
17 quantitative basis to repair the unit was done under the  
18 assumption that there would be zero insurance coverage,  
19 because that's the proper way you do this. When you  
20 look at these types of things, you look at a bounding  
21 case. You don't look at how it's being paid for, you  
22 look at the numbers and say do the numbers make sense on  
23 the quantitative side. Do the risks make sense on the  
24 qualitative side? So to suggest to you that the  
25 insurance plays in on this is simply, I believe, the



1 intervenors saying, look, if someone else is paying for  
2 it, I don't care what the company does, have at it. So  
3 they are ignoring the prudence issues, they are just  
4 concentrating on do I get to pay for -- does the  
5 insurance pay for this or not. And that is not an issue  
6 that is proper, nor is it an issue that should be  
7 holding up anything here.

8           And I guess the final thing to mention, too,  
9 is you have heard this unbroken chain and these events  
10 all come back and play on each other. It sounds like to  
11 me a lot of I want to use hindsight. I want to look to  
12 at things that happen in the future and try to bring  
13 that back. And that is not a proper reason to hold up  
14 the movement of this case. For instance, Mr. Rehwinkel  
15 raises in his response to the motion that we just filed  
16 that one of the issues is the decision to self-manage  
17 the initial project or put it out for a turnkey EPC.  
18 There's nothing in the world that is going to happen  
19 from now that has happened since that decision was made,  
20 nor is there anything else that's going to happen that's  
21 going to impact on the prudence of that decision that  
22 was made back in the early 2000s. It's ripe; it's ready  
23 for you to hear. So I would listen carefully to these  
24 arguments, because I'm not sure they are on point.

25           **COMMISSIONER BALBIS:** Thank you.

1           **MR. MOYLE:** If I could just make one point,  
2 and I appreciate the informal kind of nature and your  
3 allowing us to kind of talk this through a little bit.  
4 But I must confess I'm a little confused in terms of  
5 what exactly is being contemplated within the ambit of  
6 these various phases. And I would think that part of  
7 that is because we have not had issues identification,  
8 which we typically do in dockets when the dockets are  
9 filed. Staff will call an issues identification  
10 meeting, and we will sit down and we will go through  
11 issues, and come up with issues and debate them,  
12 sometimes bring them to the prehearing officer, but we  
13 haven't really done that.

14           And to the extent that we are making decisions  
15 about phases without having issues, I think that leads  
16 to, at least in my mind, some confusion as to, you know,  
17 what is on the table, off the table, things like that.  
18 So, you know, the points made by my colleagues about  
19 having a scoping of the issues not only to my mind makes  
20 sense, but is consistent with how I understand things  
21 are done at the Commission with respect to the docket.  
22 This was a spinout docket with issues being scoped out  
23 and identified and having meetings, oftentimes multiple  
24 meetings to identify the issues. And I think that will  
25 provide some clarity as to whether there's a good

1 natural break on some of this stuff that you might be  
2 able to consider separately or not. So as you are  
3 considering, you know, which way to go on this, I'd  
4 encourage you to think at least as a first step to get  
5 everybody together probably with a staff-assisted issues  
6 identification case so that we kind of understand what  
7 it is we are talking about, and I think it will lead to  
8 more clarity in these conversations. Thank you.

9 **COMMISSIONER BALBIS:** Thank you.

10 And in closing, I agree, Mr. Moyle, with some  
11 of the comments, and actually I agree with comments that  
12 each party has made. And I don't believe you were at  
13 the last status conference, but just to summarize, you  
14 know, one of my goals is that if there are issues that  
15 are ripe for a decision by the Commission in any way  
16 that we can reduce the regulatory lag when you are  
17 dealing with dollars of this magnitude to wait five or  
18 six years after the event occurred when we could have  
19 made a decision on issues that the information is in  
20 place and is ripe for a decision, then I would move  
21 forward in that direction.

22 But, again, and I do agree with your comments  
23 as far as making -- having meetings to discuss the  
24 issues, and one of the things that I have discussed with  
25 staff is with the order establishing procedure and

1 setting the timelines and the dates. And, Ms. Bennett,  
2 if you can talk about some of the options for the next  
3 step, if I do go in that direction in order to have  
4 those productive meetings, to kind of fine-tune this.

5 **MS. BENNETT:** Certainly, Commissioner. I did  
6 hear FIPUG and PCS White Springs talk about issue  
7 identification, and I think that is very productive.  
8 Usually we have the order establishing procedure and  
9 then staff sets an issue identification shortly  
10 thereafter, but testimony a lot of times is filed. With  
11 this one that's not the case. We would suggest having  
12 an issue identification meeting in early September or  
13 maybe even late August, and then staff suggested -- do  
14 you want to go ahead and let me give you a timeline of  
15 suggested hearing dates and filing of testimony? I have  
16 some.

17 **COMMISSIONER BALBIS:** Yes, if it's consistent  
18 with my February order.

19 **MS. BENNETT:** Yes, it is. The suggested dates  
20 would be that we would have an issue identification  
21 sometime late August or the first of September.  
22 October 10th Progress would file its testimony.  
23 February 10th, which would be the intervenor testimony.  
24 March 12th would be staff's testimony. April 12th would  
25 be rebuttal testimony. And the hearing would be May

1 14th through the 18th of 2012.

2 COMMISSIONER BALBIS: Can you restate those  
3 dates, especially the beginning part? I believe you  
4 mentioned an August 10th date. I don't know if that was  
5 correct or not.

6 MS. BENNETT: Did I say August? I meant  
7 October 10th.

8 COMMISSIONER BALBIS: Okay.

9 MS. BENNETT: October 10th would be Progress'  
10 testimony. February 10th would be the intervenor  
11 testimony. March 12th would be staff testimony.  
12 April 12th would be rebuttal testimony. And the week of  
13 May 14th would be the hearing.

14 MR. REHWINKEL: That's only four months for  
15 Public Counsel or the intervenors, isn't it? Is my math  
16 off? November, December, January, February. If the  
17 company filed October 10th -- let's see, November,  
18 December, January, February. That's four months.

19 MS. BENNETT: Well, as I recall, that was  
20 the --

21 MR. REHWINKEL: I thought we had 180 days.

22 MS. BENNETT: After return to service. That  
23 was the original request was 120 days after return to  
24 service.

25 MR. REHWINKEL: Oh, I was looking at the --

1                   **MR. BREW:** Excuse me.

2                   **COMMISSIONER BALBIS:** Yes, Mr. Brew.

3                   **MR. BREW:** I was just going to comment while  
4 Mr. Rehwinkel was checking his dates. One thing that  
5 does really concern me is 30 days to the hearing after  
6 rebuttal. I would expect in a case of this nature that  
7 the company's rebuttal filing is going to be massive  
8 relative to what the intervenors file. And 30 days  
9 would be insufficient to do much of anything with  
10 respect to discovery or depositions of what could likely  
11 be truly the company's case in chief. So I have a big  
12 concerns of the overall schedule. Thirty days for the  
13 hearing from rebuttal, while it is within the norm of  
14 what the Commission normally does for case scheduling,  
15 may be completely inappropriate for a case of this  
16 context.

17                   **MR. REHWINKEL:** Public Counsel would concur  
18 with that. You know, in your order you set out a  
19 hearing schedule, a prehearing schedule, but you did not  
20 say when the hearing would occur. And I believe that  
21 the one thing that we have tried to emphasize is the  
22 Commission has never done anything like what they would  
23 be doing in this case before. You don't have the  
24 internal expertise dealing with the civil engineering  
25 issues. I think the one thing that's probably almost a

1       certainty is the case will be more complicated and will  
2       result in a need for additional discovery after that  
3       case comes in on rebuttal.

4                You know, we mentioned surrebuttal in here  
5       because we are not really sure where the burden of proof  
6       will lie and what the Commission's expectations will be  
7       about that. This is probably a level of complication  
8       that we don't need to introduce today, but I think our  
9       issue identification process should deal with that. But  
10       certainly if the burden of proof -- it depends on where  
11       the burden of proof is as far as what the expectations  
12       are after that rebuttal round of testimony filed by the  
13       company.

14               So it is either going to be that the parties  
15       may want surrebuttal opportunities if the burden is not  
16       clearly on the company's shoulders, or there may be a  
17       need for discovery on what could be a significant  
18       rebuttal case. So I would agree with Mr. Brew on that.  
19       And I apologize on the 180 days. For some reason I  
20       wasn't reading that correctly, and I was thinking six  
21       months after the company filed. But certainly we have  
22       agreed to the 120 days after the company has filed.

23               **COMMISSIONER BALBIS:** Okay. Thank you.

24               And I'll consider your comments as far as any  
25       adjustments to those dates, and take those into

1 consideration. And, Mr. Rehwinkel, after the  
2 November/October of 2009 discovery of the initial  
3 delamination, I think it was mentioned, I think from  
4 Progress, that day one discovery was open. When did you  
5 start issuing discovery requests on this docket or  
6 issue?

7 **MR. REHWINKEL:** I believe that we issued our  
8 first discovery response sometime around November of  
9 2009. It was a very all-encompassing request, and we  
10 talked to the company about it. I gave them -- instead  
11 of the normal 30 days, I gave them until January 11 to  
12 reply. Not only because of the breadth of the request,  
13 but because of the holidays and trying to be considerate  
14 in that way. So once we kind of learned about the  
15 delamination, I think we acted very quickly to do that.  
16 And then the discovery came in right around  
17 January 11th, and I believe on the first or second day  
18 we began looking at the documents.

19 **COMMISSIONER BALBIS:** Okay. Thank you. And,  
20 again, I just want to be clear that I'm not proposing  
21 that we start the hearing process, or decide on any  
22 issues, or hear any issues on something that is not  
23 ripe. And in no way am I implying we are going to be  
24 rushing anything, or do anything without following a  
25 clear thought out approach to this. However, again, if



1 there are any issues or decisions that can be made with  
2 information that exists, understanding that since day  
3 one discoveries have been issued and responded to, et  
4 cetera. So it's not as if the parties have been waiting  
5 for this hearing schedule to start or be implemented.  
6 But, again, I will take all of your comments into  
7 consideration in determining this and will issue an  
8 order establishing procedure shortly.

9 **MR. REHWINKEL:** Can I address the scope of how  
10 we proceed just briefly?

11 **COMMISSIONER BALBIS:** Briefly.

12 **MR. REHWINKEL:** We have spent many, many, many  
13 hundreds of hours reviewing the documents. Part of what  
14 has happened that, you know, it looks like we have been  
15 just kind of languishing for a year, is this very  
16 shocking March event happened and then there was kind of  
17 a standstill where we are trying to figure out which way  
18 we were going to go. I mean, we never stopped working  
19 on this matter. So I do concede to you that there are  
20 matters that are ripe for review, and we certainly are  
21 willing to go along with that, but I just wanted to be  
22 also clear that the Public Counsel's Office has worked  
23 very, very hard with a very large amount of information  
24 to understand the event and to deal with this other  
25 post-March delamination issue where really we were

1 trying to understand with the company and the other  
2 parties where things were.

3           **COMMISSIONER BALBIS:** Thank you. And it was  
4 actually meant as a compliment for OPC in that rather  
5 than waiting for a formal process to start, you  
6 immediately started gathering information. So, again,  
7 it may not have sounded as a compliment, but it was  
8 definitely meant as such. But, again, I appreciate  
9 everyone attending. And, again, I will issue an order  
10 establishing procedure or other documents shortly.

11           And with that this status conference is  
12 adjourned.

13           (The Status Conference concluded at 10:28  
14 a.m.)

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

I, JANE FAUROT, RPR, Chief, Hearing Reporter Services Section, FPSC Division of Commission Clerk, 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' attorney or counsel connected with the action, nor am I financially interested in the action.

DATED THIS 11th day of August, 2011.



\_\_\_\_\_  
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