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BEFORE THE
FLORIDA PUBLIC SERVICE COMMISSION

FILED AUG 05, 2014
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FPSC - COMMISSION CLERK

In the Matter of:

DOCKET NO. 140009-EI
NUCLEAR COST RECOVERY CLAUSE.

VOLUME 3
Pages 466 through 637

PROCEEDINGS: HEARING

COMMISSIONERS PARTICIPATING: COMMISSIONER RONALD A. BRISÉ
COMMISSIONER EDUARDO E. BALBIS
COMMISSIONER JULIE I. BROWN

DATE: Monday, August 4, 2014

TIME: Commenced at 3:30 p.m.
Concluded at 6:30 p.m.

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

REPORTED BY: MICHELLE SUBIA, RPR
Notary Public in and for
the State of Florida at Large

APPEARANCES: (As heretofore noted.)

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EXHIBITS

NUMBER:		ID.	ADMTD.
2-6	(As described in the Comprehensive Exhibit List - Exhibit 1)	47	494
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CERTIFICATE OF REPORTER 637

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

2 (Transcript follows in sequence from
3 Volume 2.)

4 Thereupon,

5 THOMAS GEOFF FOSTER

6 was called as a witness, having been previously duly
7 sworn, was examined and testified as follows:

8 CONTINUED CROSS EXAMINATION

9 BY MR. REHWINKEL:

10 Q So were you able to make this ratemaking
11 credit, if you will, the 328, because you were doing it
12 under FAS 71, which meant that you could get recovery
13 if for whatever reason you didn't ultimately recover
14 that from NEIL, that you would be able to get your 328
15 back?

16 A I guess I would say that when we project
17 something for a future year, there's not a lot of GAAP
18 accounting around that, for lack of a better term, but
19 there's not a lot of -- you can't estimate X dollars.

20 Q We'll go back to my hypothetical. Would you
21 agree that kind of going through at this very high
22 level, almost back of the envelope kind of math that we
23 went through, and if you assume that you're in the
24 ballpark of 40 to \$50 million of over-recovery instead
25 of \$6.1 million of under-recovery, that at the 3.45

1 rate, customers would be in an over-recovery mode, all
2 other things being equal, and no changes to assets or
3 anything like that?

4 A That sounds right in that scenario.

5 Q Okay. Let me move from that to one last area
6 of questions. Are you generally familiar with
7 Westinghouse Electric's claim that Duke owes it an
8 additional \$482 million in termination costs related to
9 the standard plan and whatever else?

10 A I'm aware of it. I wouldn't claim much
11 familiarity. That's really stuff to talk to Mr. Fallon
12 about.

13 Q And I won't ask you to have that kind of
14 familiarity, but I will ask you this. Is it since 2010
15 since you've been presenting NFR schedules?

16 A I think that's right.

17 Q Have you presented any such cost to the
18 Commission for recovery?

19 MS. CANO: I would object. The witness has
20 testified that he's not very familiar with the
21 \$482 million cost, so he certainly can't testify
22 whether or not he's presented them.

23 MR. REHWINKEL: Mr. Chairman, my question is
24 what's in here. I mean, he can say whether it's
25 in there or not. I don't think that that's what

1 he said. He doesn't know what goes into the 482,
2 but I'm asking him did he present any such cost
3 for recovery.

4 MS. CANO: Same objection. He testified he
5 does not know what is in the \$482 million they're
6 claiming with regard to standard plan, quote,
7 unquote, cost. He certainly can testify what's in
8 his schedules. But if he doesn't know what makes
9 up that 482 million, how can he tell you whether
10 or not it is in his schedules. But certainly if
11 he can. But my hearing of his testimony is that
12 he doesn't know what's in the 482 million.

13 CHAIRMAN BRISE: Okay. The question can be
14 asked and he can answer what he knows.

15 BY MR. REHWINKEL:

16 Q Do you need me to ask it again?

17 A Please.

18 Q Since 2010 when you've been presenting your
19 NFR schedules, have you presented for recovery any of
20 the costs that Westinghouse is seeking in the
21 \$482 million claim that they've lodged against Duke?

22 A I don't know because I don't know what's in
23 that claim.

24 Q So would Mr. Fallon be the one to ask that
25 to?

1 A You can ask him that question, yes.

2 Q So if Mr. Fallon said to me, no, I have never
3 given any types -- any numbers that reflect these type
4 of costs to Mr. Foster for him to put in the NFR
5 schedules, would that be good evidence that you have
6 never presented schedules that included costs such as
7 the ones that are in the \$492 million claim?

8 A I'm sorry, there was a lot to that question.

9 Q Okay. Well, early you told me that the
10 numbers, for example, in Line 1 --

11 A Can I take a try?

12 Q -- were with Mr. Fallon?

13 A That's correct. And I'm struggling a little
14 bit. We certainly haven't paid those dollars, so I can
15 tell you that we haven't presented those specific
16 dollars for approval. Could we have included
17 activities related to things that they're claiming in
18 our schedules over the years? We could have. I just
19 can't tell you that right now. And I'm not 100 percent
20 sure whether he would know year over year exactly every
21 activity and how it relates to that as we sit here
22 today.

23 Q I think you answered the question that I
24 asked you. I appreciate that. And I understand the
25 clarification.

1 **To your knowledge -- and I'm asking you this**
2 **because you're a CPA in the area of the company that**
3 **you work in -- has Duke ever recorded a liability on**
4 **its books, whether for financial reporting or**
5 **otherwise, internal reporting, taxes, regulatory,**
6 **et cetera, whatever, related to these \$482 million that**
7 **Duke (sic) claims that Dukes owes it?**

8 A Have we ever recorded liability? I'm not
9 sure if we have recorded a liability specifically
10 related to that amount or not. I'm just not sure.

11 Q **Well, if I asked you before January 1, 2014**
12 **had you ever recorded a liability, would you be able to**
13 **answer it any better, given that the lawsuit was filed**
14 **on March 31st or whatever of 2014?**

15 A Right. I'm not 100 percent sure. There's a
16 lot of folks who work on that type of stuff in our
17 company, including folks such as external auditors and
18 things like that, so I'm not 100 percent sure on that.

19 Q **Okay. Well, I guess I expect you to know a**
20 **lot of things, but I don't expect you to know**
21 **everything. Thank you very much.**

22 MR. REHWINKEL: Those are all of my
23 questions, Mr. Chairman.

24 CHAIRMAN BRISE: All right. Thank you very
25 much.

1 Mr. Brew?

2 MR. BREW: Thank you, Mr. Chairman.

3 CROSS EXAMINATION

4 BY MR. BREW:

5 Q Good afternoon, Mr. Foster.

6 A Good afternoon.

7 Q This will be real quick with respect to the
8 \$482 million that Westinghouse has sued Duke for.
9 Quickly, I thought I heard you say that as far as you
10 know, that Westinghouse has never billed Duke for any
11 of those dollars; is that correct?

12 A I don't know if I said that they never billed
13 us. I think I said we haven't paid.

14 Q All right. Apart from that, do you know if
15 Duke has ever -- what's the easiest way to put it?
16 Have you ever failed to include in the NFRs any dollars
17 actually paid by Duke to Westinghouse for the LNP
18 project?

19 A Are you referring specifically to actual --

20 Q Yes. Anything that they've invoiced you for
21 actual expenditures.

22 A To my knowledge, no. I mean, there could
23 have been a period where we did and then fixed it the
24 next month, you know, there could have been. But to my
25 knowledge, no.

1 me what your understanding is of what a turbine
2 generator is.

3 A I understand it to be a piece of equipment
4 that is used in the generation of electricity.

5 Q And it's a big piece of equipment, right?

6 A Yes.

7 Q It usually costs a lot of money?

8 A Typically I would expect them to be
9 expensive, big pieces of equipment, yes.

10 Q And this 54 million that we've been talking
11 about is comprised of a turbine generator and this
12 reactor vessel item, correct?

13 A I believe that's accurate.

14 Q Okay. And the lion's share of that
15 50 million, give or take, relates to the turbine
16 generator?

17 A I believe that's accurate.

18 Q And I think you said that that has been paid
19 for, Duke paid for that turbine generator, correct?

20 A Yes, to the extent the dollars are reflected
21 in here.

22 Q Okay. And I think you also have confirmed
23 that the ratepayers have paid for that turbine
24 generator, correct?

25 A Yes.

1 Q Okay. And so if I said, well, Mr. Foster,
2 where is that turbine generator that Duke has paid for
3 and that the ratepayers have paid for, where can I go
4 see that, what would you tell me?

5 A I am not that involved with the contract.
6 You need to talk to Mr. Fallon.

7 Q And isn't it true that as far as you know,
8 Duke has never taken possession of that? They never
9 got the turbine generator?

10 A I wouldn't speculate on that. That's really
11 not my area, Mr. Moyle.

12 Q So you heard -- you were here for opening
13 statements and you heard some of the lawyers say, hey,
14 we paid for something, we never got anything, your
15 testimony would be you don't know whether that's true
16 or not, you just don't know; is that right?

17 A I don't believe I testified to that.

18 Q Well, I thought you just -- when I asked you
19 where is the turbine generator, you said you don't
20 know, and so I'm following up to just kind of
21 understand what your state of mind is, what you know.
22 You know, we've said, hey, Duke never got the turbine
23 generator, and I'm asking you did you ever get the
24 turbine generator, and you're telling me I don't know,
25 Mr. Moyle?

1 A Well, if you're asking me -- I think it's
2 different than what you just said. But if you're
3 asking me if I know whether we ever got the turbine
4 generator, I don't believe so. But the appropriate
5 person to ask that of is Mr. Fallon.

6 **Q Okay. So when you're preparing all these**
7 **schedules and stuff, you're signing your name, you're a**
8 **CPA, how do you satisfy yourself that what's in the**
9 **schedules is accurate and good information?**

10 A We have a lot of folks who participate in
11 this, this isn't just me, that's for sure. And as I
12 discussed with Mr. Rehwinkel, the dollars in the
13 Line 1, the investment dollars, we work with folks from
14 Mr. Fallon's team, we've got folks that manage those
15 contracts and they verify when payments go out. There
16 are a lot of controls about when payments go out and
17 how we manage our contracts. Those folks all look at
18 it. We have internal and external audits who look at
19 our processes around those types of things.

20 So while I will fully stipulate that I don't
21 go verify if there's a payment represented by
22 Mr. Fallon's group that there's a turbine generator out
23 there. What I will say is I have a high level of
24 confidence in our process that we do have good
25 processes in place and we look at those every year.

1 And, in fact, this Commission audits them every year.
2 So that's how I'm comfortable with our schedules.

3 Q So in the course of business, if there's a
4 \$50 million payment for a turbine generator, do you
5 have a process where you check and go, hey, did we get
6 this turbine generator or no?

7 MS. CANO: Objection. Asked and answered
8 multiple times.

9 CHAIRMAN BRISE: Yeah, I think you can move
10 on, Mr. Moyle.

11 BY MR. MOYLE:

12 Q You're the accounting guy for Duke with
13 respect to the nuclear cost recovery costs, right?

14 A There's a group that does more of the
15 accounting. I'm more of a rates guy. But I do
16 represent some of our actuals.

17 Q Okay. So you said in your opening statement,
18 in your summary, that you were here to provide support
19 and testimony with regard to monies recovered for the
20 Levy and for the uprate project; is that right?

21 A That's correct.

22 Q Okay. So as we sit here today, can you tell
23 me how much has been paid to Duke for the Levy project,
24 the Nuclear Levy project and for the uprate project?
25 We'll just take Levy first.

1 A Through the end of June, approximately
2 780 million has been collected.

3 **Q 780 million?**

4 A Yes.

5 **Q And how about for the uprate?**

6 A Let me see. Give me a second, if you would,
7 sir.

8 I'm not sure I have that amount right in
9 front of me.

10 **Q You can ballpark it if you're comfortable**
11 **doing that.**

12 A I think I have it here, I'm just trying to
13 remember exactly where. I apologize. I apologize for
14 taking so long.

15 **Q That's okay. If your counsel wants to assist**
16 **you in that, I'm open to that as well, if they may want**
17 **to point you in the right direction.**

18 A Is that something that I -- I'm sure given a
19 few minutes -- I don't know if there's going to be a
20 break or anything, but given five or ten minutes, I
21 could get that. Is that something we can come back to?

22 **Q You know, I don't know that we need to. I**
23 **mean, if you can give me a number that's within**
24 **50 million bucks, I'll take it, a range.**

25 A Subject to check, \$70 million. I'm not sure.

1 But I would be happy to refine that if we get a break.

2 Q All right. So just based on that, and I
3 understand the uprate is a rough number, give or take
4 850 million, you know, on the nuclear efforts that have
5 been recovered today through the clause, correct?

6 A About 780, yes.

7 Q Okay. And has there ever been, do you know,
8 a disallowance for any dollars sought by Duke?

9 A I don't believe there's been a disallowance
10 of anything.

11 Q Okay. And you and Mr. Rehwinkel talked about
12 a credit, and that related to the NEIL payment,
13 correct? There was a credit provided to the ratepayers
14 based on some anticipated monies that may have come
15 from NEIL, correct?

16 A You mean in the fuel costs, is that what
17 you're referring to?

18 Q Yes.

19 A There was a -- in ratemaking space, an
20 adjustment for an assumed receipt.

21 Q And I think Mr. Rehwinkel was trying to draw
22 an analogy between NEIL money that might be due and
23 then these 54 million monies that we agree have been
24 paid by the ratepayers -- maybe we haven't agreed
25 yet -- that you didn't get a turbine, but we may get

1 **that with Mr. Fallon -- but there's nothing that you're**
2 **aware of that would preclude this Commission from a**
3 **process standpoint of providing a credit to ratepayers**
4 **for the 54 million, correct?**

5 A I'm not sure that is correct.

6 Q **Why? I mean, if the Commission --**

7 A What would the credit be based on? I guess
8 it -- and here is why I say that, is there is a statute
9 and a rule that says what can be recovered. So if
10 we're talking about dollars that were incurred in a
11 previous period and were evaluated, put in front of
12 this Commission and found to be prudent, I'm not sure
13 that I --

14 MR. MOYLE: Mr. Chairman, I'm not asking for
15 his legal opinion. We understand that's a
16 question of law.

17 BY MR. MOYLE:

18 Q **I'm just asking you from a regulatory**
19 **standpoint with the Commission, whether it was legal or**
20 **not legal, but they said, here, Duke, we're ordering**
21 **you to provide a credit for \$54 million that Duke has**
22 **paid, that the ratepayers have paid for a turbine and**
23 **reactor vessel tunnel that never were received by Duke,**
24 **you're not aware of anything that would prevent that**
25 **from being done as a regulatory -- you know, checks and**

1 **balances and a regulatory ratemaking process, correct?**

2 MS. CANO: I would object. I mean, it still
3 does call for a legal conclusion.

4 MR. MOYLE: Mr. Chairman, I'm trying to
5 say -- I'm not asking for a legal conclusion. I'm
6 just asking you, you know, from a process
7 standpoint, you know, would it be something that
8 he believes that this Commission could not do,
9 that they don't have, you know, the systems to do
10 it, they don't have the computers to do it, that
11 Duke doesn't have, you know, the ability to do
12 that. I think the answer is no, but that's what
13 I'm trying to get at.

14 MS. CANO: Commissioner, if he is saying
15 could the Commission type \$54 million into a Word
16 document, I think the answer is yes. But I think
17 the Commission's processes are based on the laws
18 and rules and there are procedures, and he's
19 asking Mr. Foster for a legal conclusion then.

20 CHAIRMAN BRISE: Okay. I guess I'm going to
21 get into some shaky ground if I ask a question.
22 Mr. Foster is presented as what kind of witness?
23 What is his role with the company again?

24 MS. CANO: He is the Director of Rates and
25 Regulatory Planning and he is a fact witness here

1 in front of the Commission, yes.

2 CHAIRMAN BRISE: So in his role, does he
3 think about the strategy that is going to be used
4 in terms of looking at the regulatory approach?

5 MS. CANO: I would ask Mr. Foster that
6 question.

7 CHAIRMAN BRISE: Well, I would ask him that
8 later, but I'm asking you in terms of the
9 objection.

10 MS. CANO: In terms of the objection, the
11 objection goes more to the legal conclusion based
12 on the statute and the rule. Does Mr. Foster look
13 at regulatory strategies? Certainly.

14 CHAIRMAN BRISE: Okay. Mary Anne, what's
15 your thought?

16 MS. HELTON: I think Mr. Moyle can ask him if
17 he knows. And if he doesn't know, then I think
18 that we can move on.

19 CHAIRMAN BRISE: Mr. Moyle.

20 BY MR. MOYLE:

21 Q Mr. Foster, I may not be expressing myself
22 clearly or asking you the question that I want
23 answered. I don't want -- you're not a lawyer, right?

24 A That's correct.

25 Q So I don't want, you know, a legal opinion.

1 I'm just trying to make sure the record's clear that as
2 we sit here today, if the Commission adopted the
3 position of OPC and some others and said, hey, the
4 ratepayers ought to get a credit, that functionally you
5 all could handle such a credit order and process it and
6 give credit to the ratepayers in a ratemaking context,
7 correct?

8 A If you're asking if we could mechanically put
9 it in the schedules from a ratemaking standpoint, I
10 mean, it's -- we could mechanically put it in there.

11 Q That's what I'm asking.

12 A If that's the extent of your question.

13 Q That's what I'm asking.

14 A Mechanically it's possibly to put a number in
15 the system.

16 Q Okay. And you could give it effect and
17 implement it if that's what the Commission ordered?
18 Notwithstanding that your counsel might say we don't
19 think that's legal and all of those things, but you
20 could essential carry out and execute if the Commission
21 took that position?

22 A Well, at the end of the day --

23 Q If you could give me a yes or no and then
24 explain it if you need to.

25 A Yes, we could mechanically do that. At the

1 end of the day, it would not have an impact on anything
2 we presented for rates. But, you know, because of the
3 settlement we're under right now, rates are fixed. So
4 it may change numbers in these supporting schedules and
5 whatnot, but I wouldn't be -- if that were the order, I
6 would not expect it to change our rate for next year.

7 Q Okay. That's fair enough. That's fair
8 enough. And FIPUG is a -- I mean, we signed the rate
9 settlement and we're good with it and executed it. I'm
10 just trying to understand your processes.

11 So another couple of questions and I think
12 we'll be done. One of the distinctions between the
13 NEIL credit money that was in the fuel clause and this
14 issue, this request for a \$54 million adjustment or
15 credit is that the NEIL credit was something that was
16 initiated by Duke, correct?

17 A That is one distinction, yes.

18 Q Okay. And in this case, Duke has not
19 initiated this, this has been initiated by the Office
20 of Public Counsel, correct?

21 A That's accurate.

22 Q Okay. And you all oppose this request,
23 right, "you all" being Duke?

24 A Yeah, we don't think it's appropriate.
25 That's a valid statement there, yes, sir.

1 Q And this may be a little outside of your
2 frame of reference, but federal court litigation, do
3 you have any experience with federal court litigation
4 and how quickly or not so quickly that tends to move
5 along?

6 A I do not have any direct experience with
7 federal court litigation.

8 Q Okay. Well, thank you for answering my
9 questions. I appreciate it.

10 CHAIRMAN BRISE: All right. Thank you.
11 Mr. Wright?

12 MR. WRIGHT: No questions, Mr. Chairman.
13 Thank you.

14 CHAIRMAN BRISE: All right. Thank you very
15 much. Let's deal with -- staff, do you have any
16 questions?

17 MR. YOUNG: No questions.

18 CHAIRMAN BRISE: Commissioners?

19 COMMISSIONER BALBIS: I have a few.

20 CHAIRMAN BRISE: Commissioner Balbis.

21 COMMISSIONER BALBIS: Thank you. And thank
22 you, Mr. Foster, for your testimony. I just have
23 a few quick questions. And I know in your
24 testimony that we've been talking about numbers,
25 some confidential and some others. So just to be

1 clear, the jurisdictional amount for 2013 actual,
2 what is the total for that, for the LNP project?

3 THE WITNESS: For Levy?

4 COMMISSIONER BALBIS: Yes.

5 THE WITNESS: And when you say "total," are
6 you talking about the spend, like the -- or are
7 you talking about the revenue requirement?
8 Forgive me, I just want to make sure I understand
9 your question accurately.

10 COMMISSIONER BALBIS: The spend.

11 THE WITNESS: Let me get to that section.

12 So those numbers can be seen in my
13 Exhibit TGF-2 on Page 5 and 6 -- I'm sorry -- 4
14 and 5. And I'm just directing you there, and
15 you'll see why in a minute, because those have
16 been held confidential.

17 But with regard to the jurisdictional
18 preconstruction and construction spend, I can give
19 you numbers for that. I just want to make sure
20 that at the system level those will be held
21 confidential. I can't say them, but you can see
22 them.

23 Do you want me to point to the lines?

24 COMMISSIONER BALBIS: No. Maybe we're
25 talking past each other. The jurisdictional

1 amount that we're truing up, the total amount that
2 was spent in 2013 -- and shouldn't be
3 confidential -- and I want to --

4 THE WITNESS: Okay. So the period revenue
5 requirement, if you go to Page 3 of that same,
6 shows the revenue requirement for that period of
7 31 million, approximately 31 million.

8 COMMISSIONER BALBIS: Okay.

9 THE WITNESS: And it breaks it down in
10 Lines 1A through C the various types of costs that
11 were -- happened in the period, as well as Line 2
12 shows the assigned O&M cost.

13 COMMISSIONER BALBIS: Okay. And then for
14 2014?

15 THE WITNESS: Sure. And I apologize for not
16 picking up right away. I'm not sure what could
17 happen there. I pulled them all out because
18 Mr. Rehwinkel had asked me a bunch of questions.

19 The revenue requirements can be seen on
20 Page 4 of Exhibit TGF-5, but the period revenue
21 requirements were 38.7.

22 COMMISSIONER BALBIS: Okay. And then for
23 2015?

24 THE WITNESS: You can see a breakout similar
25 to the '13 breakout on Page 3 of that same

1 Exhibit TGF-4. And, again, the period revenue
2 requirement there is 9.9, approximately
3 \$10 million, you can see on Line 3.

4 COMMISSIONER BALBIS: Okay. So in 2013 it
5 was roughly 31 million, 2014 about 39, and 2015
6 about ten million?

7 THE WITNESS: That's right. Yes, sir.

8 COMMISSIONER BALBIS: Okay. And the \$3.45
9 that customers are paying, how much revenue does
10 that generate, approximately?

11 THE WITNESS: One hundred and -- just north
12 of 100 million.

13 COMMISSIONER BALBIS: Okay. So if Duke is
14 getting \$100 million from the customers and the
15 costs that you just listed are less than that,
16 what other expenditures are customers -- or is
17 Duke using the \$100 million for in each year?

18 THE WITNESS: So we're amortizing those
19 dollars that had previously been deferred and had
20 been incurred the previous periods, just like the
21 settlement said Mr. Rehwinkel had said incurred
22 expenses that have not been recovered yet, so
23 that's what it's being applied against.

24 COMMISSIONER BALBIS: Okay. Are there any
25 costs associated -- I mean, all of the costs

1 associated with the revenues of \$100 million are
2 with Levy, there are no CR3 costs?

3 THE WITNESS: That's right. That 103 or
4 4 million, roughly.

5 COMMISSIONER BALBIS: And I know that -- I
6 believe it was in the 2012 settlement agreement
7 discussions, there was discussions about
8 termination fees and there was some estimates as
9 to what that was, and I'm pretty sure that was
10 confidential.

11 But are there any expected termination fees
12 in 2015 that are included in the 10 million or
13 other --

14 THE WITNESS: So in 2015 -- and I briefly
15 touched on it in my testimony, and Mr. Fallon
16 touched on it -- we didn't make any estimates for
17 that because, as you know, there's a litigated
18 case that we didn't try to predict the outcome of
19 or didn't feel the need to predict the outcome of.

20 COMMISSIONER BALBIS: Okay. I don't know if
21 you're the right person for this question, but
22 once the deferred costs are recovered fully -- and
23 there's been talk about one that's estimated -- if
24 it is prior to the end of the settlement agreement
25 where the settlement agreement states the \$3.45

1 could be recovered for a certain period of time,
2 is it Duke's intention to continue to collect the
3 \$3.45 pursuant to the settlement agreement or
4 cancel or revise that?

5 THE WITNESS: Without knowing all of the
6 facts and circumstances, I can tell you to the
7 extent all the -- of the costs are known and were
8 over-recovered or are going to be over-recovered
9 and we would not intend to continue it. And I
10 think the settlement provides for that, it says if
11 you become fully recovered, if you're in a fully
12 recovered position, there's a provision where you
13 can stop it earlier. And if we were fully
14 recovered, we would.

15 COMMISSIONER BALBIS: Okay. And then those
16 other costs, absent the true expenditures, whether
17 it's a deferred cost or the rate management plan,
18 all of those costs have gone through performance
19 review previously?

20 THE WITNESS: Through the end of '11, and
21 then I know this one -- the '12 and '13 are being
22 reviewed now or I think they have been stipulated
23 to, but I would look to my attorneys to make sure
24 of that. As Mr. Moyle pointed out, I'm definitely
25 not a lawyer.

1 COMMISSIONER BALBIS: Okay. Thank you.

2 That's all I have.

3 CHAIRMAN BRISE: All right. Any further
4 questions?

5 (No response.)

6 CHAIRMAN BRISE: All right. So redirect?

7 MS. CANO: I'm sorry, just briefly.

8 REDIRECT EXAMINATION

9 BY MS. CANO:

10 Q Mr. Foster, in response to a question by the
11 OPC, you stated that you thought the NEIL adjustment
12 and the fuel clause was very different from the
13 \$54 million credit that OPC is requesting. Why is
14 that?

15 A Well, a couple of reasons that I would have
16 to point out. One, they had already made payments
17 under that claim so there was -- to my knowledge, they
18 had accepted that the first incident had occurred and
19 that there was money payable under that. Yes, they did
20 stop to reevaluate after the second.

21 I'm not sure all of the mechanics of what was
22 going on there, but to my knowledge, there was no court
23 case filed on that one. So to me, that's a pretty
24 significantly different scenario.

25 Q Thank you.

1 **CHAIRMAN BRISE: All right. Do you have**
2 **exhibits that you would like to enter?**

3 MS. CANO: I do, yes. We would move in
4 evidence Mr. Foster's Exhibits TGF-1 through
5 TGF-5, and those are listed as Exhibits 2 through
6 6 on the comprehensive exhibit list of staff.

7 CHAIRMAN BRISE: Okay. Any objections?

8 (No response.)

9 CHAIRMAN BRISE: Okay. Seeing none, we will
10 move Exhibits 2 through 6 into the record.

11 (Exhibit Nos. 2 through 6 admitted into the
12 record.)

13 CHAIRMAN BRISE: Anyone else have any
14 exhibits?

15 (No response.)

16 CHAIRMAN BRISE: I don't think we had any
17 other exhibits. All right. Thank you.

18 MS. CANO: If there are no objections, we
19 would ask that Mr. Foster be excused.

20 CHAIRMAN BRISE: All right. Are there any
21 objections?

22 (No response.)

23 CHAIRMAN BRISE: Seeing none, Mr. Foster you
24 are excused.

25 THE WITNESS: Thank you.

1 CHAIRMAN BRISE: Call your next witness.

2 MR. ANDERSON: Duke Energy Florida calls
3 Chris Fallon.

4 Thereupon,

5 CHRISTOPHER M. FALLON

6 was called as a witness, having been previously duly
7 sworn, was examined and testified as follows:

8 DIRECT EXAMINATION

9 BY MR. ANDERSON:

10 Q Would you please introduce yourself to the
11 Commission and provide your business address?

12 A Good afternoon. My name is Christopher
13 Fallon. My business address is 526 South Church
14 Street, Charlotte, North Carolina.

15 Q And, Mr. Fallon, have you been sworn as a
16 witness here?

17 A Yes.

18 Q Who do you work for and what is your
19 position?

20 A I work for Duke Energy Corporation. I am the
21 Vice President of Nuclear Development.

22 Q And have you prefiled direct testimony on
23 March 3, 2014 and May 1, 2014 in this proceeding?

24 A Yes.

25 Q And do you have a copy of this prefiled

1 **direct testimony with you?**

2 A Yes.

3 **Q Do you have any changes to make to this**
4 **prefiled testimony?**

5 A No, I do not.

6 **Q So if I asked you the same questions asked in**
7 **the prefiled testimony today, would you give the same**
8 **answers that are in this prefiled testimony?**

9 A Yes.

10 MR. ANDERSON: We request that the March 3,
11 2014 and May 1, 2014 direct testimony of
12 Mr. Fallon be moved in evidence as if it was read
13 in the record today.

14 CHAIRMAN BRISE: Okay. We will move the
15 prefiled testimony of Mr. Fallon dated March 3 and
16 May 1 of 2014 into the record as though read.

17 (Whereupon, prefiled testimony inserted.)

18

19

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25

IN RE: NUCLEAR COST RECOVERY CLAUSE

BY DUKE ENERGY FLORIDA, INC.

FPSC DOCKET NO. 140009-EI

DIRECT TESTIMONY OF CHRISTOPHER M. FALLON

1 **I. INTRODUCTION AND QUALIFICATIONS.**

2 **Q. Please state your name and business address.**

3 A. My name is Christopher M. Fallon. My business address is 526 South Church Street,
4 Charlotte, North Carolina 28202.

5

6 **Q. Who do you work for and what is your position with that company?**

7 A. I am employed by Duke Energy Corporation (“Duke Energy”) as Vice President of
8 Nuclear Development. Duke Energy Florida, Inc. (“DEF” or the “Company”) is a
9 fully owned subsidiary of Duke Energy.

10

11 **Q. Have you previously provided testimony in Docket No. 140009-EI?**

12 A. Yes. I submitted direct testimony in this docket on March 3, 2014.

13

14 **II. PURPOSE AND SUMMARY OF TESTIMONY.**

15 **Q. What is the purpose of your May 1, 2014 direct testimony?**

16 A. The purpose of my testimony is to describe DEF’s wind-down activities for the Levy
17 Nuclear Project (“LNP” or “Levy”), including activities related to the termination of
18 the Engineering, Procurement, and Construction (“EPC”) Agreement with

1 Westinghouse Electric Company LLC (“WEC”) and Stone & Webster, Inc. (“S&W”)
2 (together, the “Consortium”) and disposition of long lead time equipment (“LLE”)
3 with WEC and its suppliers. Additionally, I present DEF’s 2014 actual/estimated and
4 2015 projected costs for the wind-down of the LNP. Pursuant to the 2013 Revised and
5 Restated Stipulation and Settlement Agreement (“2013 Settlement Agreement”) as
6 approved by the Florida Public Service Commission (the “Commission”) in Order No.
7 PSC-13-0598-FOF-EI, DEF is not including costs related to the Company’s pursuit of
8 the Levy Combined Operating License Application (“COLA”), environmental
9 permitting, wetlands mitigation, conditions of certification, and other costs related to
10 the Combined Operating License (“COL”), that DEF incurs in 2014 and beyond, in its
11 request for cost recovery under the Nuclear Cost Recovery Clause (“NCRC”). DEF
12 will continue to incur COL costs for Levy in 2014 and 2015, but under the 2013
13 Settlement Agreement, DEF will not seek to recover these costs from customers
14 through the NCRC. Additionally, my testimony provides a status update on the
15 Company’s pursuit of the Levy COL from the Nuclear Regulatory Commission
16 (“NRC”).

17
18 **Q. Do you have any exhibits to your testimony?**

19 **A.** Yes, I am sponsoring the following exhibits to my testimony:

- 20 • Exhibit No. ____ (CMF-8), a chart of the Company’s LNP LLE status;
- 21 • Exhibit No. ____ (CMF-9), DEF letter to the Consortium terminating the EPC
22 Agreement;

- 1 • Exhibit No. ____ (CMF-10), the confidential Tioga LNP LLE final disposition
2 settlement memorandum;
- 3 • Exhibit No. ____ (CMF-11), the confidential DEF letter to the Consortium
4 accepting the Tioga LNP LLE final disposition settlement offer;
- 5 • Exhibit No. ____ (CMF-12), a confidential graphical representation of the LLE
6 disposition process; and
- 7 • Exhibit No. ____ (CMF-13), a chart of the expected LNP COLA Schedule.

8 I am also sponsoring or co-sponsoring portions of the Schedules attached to Thomas
9 G. Foster's testimony as Exhibit No. ____ (TGF-4). Specifically, I am co-sponsoring
10 portions of the 2014 and 2015 Detail Schedules and sponsoring Appendices D and E.
11 These Schedules reflect the 2014 and 2015 actual/estimated revenue requirement
12 calculations, the major task categories and expense variances, and a summary of
13 contracts and details over \$1 million.

14 All of these exhibits and schedules are true and accurate to the best of my
15 knowledge and information.

16
17 **Q. Please summarize your testimony.**

18 A. With the execution of the 2013 Settlement Agreement and approval by the
19 Commission in 2013, DEF decided not to proceed with construction of Levy Nuclear
20 Units 1 and 2. DEF is implementing a wind-down plan for in-progress Levy LLE and
21 has dispositioned all LLE that was in active fabrication. DEF is soliciting internal and
22 external interest in the acquisition of the remaining LLE. To this end, DEF is

1 conducting a bid event for the remaining Levy LLE. DEF anticipates making final
2 disposition decisions for the remaining Levy LLE by the end of 2014.

3 DEF also terminated the EPC Agreement in January, 2014, pursuant to the
4 terms of the EPC Agreement. DEF continues to work with WEC in an attempt to
5 close-out the contract, but to date negotiations are stalled, and both DEF and WEC
6 have initiated litigation against the other for claims under the EPC Agreement. DEF
7 has, however, successfully negotiated a close-out of work with the other Consortium
8 member – S&W.

9 DEF plans to continue its COLA work in order to obtain the LNP COL from
10 the NRC, as long as it is reasonable to do so, and DEF currently anticipates COL
11 receipt in August of 2015 based on the current NRC schedule. At present, WEC has
12 granted DEF a revocable license to use WEC's AP1000 proprietary data for the LNP
13 COLA and DEF is working with WEC on an agreement for WEC's continued COLA
14 support work, which DEF needs to continue its work on the Levy COLA. WEC,
15 however, may terminate at any time DEF's right to use WEC's proprietary AP1000
16 information for the Levy COLA. If WEC revokes DEF's license to use the AP1000
17 data and WEC and DEF are unable to reach an agreement for WEC's continued work
18 to support the Levy COLA, DEF will be unable to obtain the Levy COL.

19 Remaining activities in 2015 will include wind-down support activities, WEC
20 litigation regarding the EPC Agreement termination, and continued COLA and
21 associated environmental permitting work, to the extent DEF is able to continue its
22 COLA work to obtain the COL.

23

1 **III. STATUS OF THE LEVY PROJECT.**

2 **Q. What is the current status of the Levy project?**

3 A. The Company elected not to complete construction of the LNP pursuant to the nuclear
4 cost recovery statute and rule, Section 366.93(6), Florida Statutes, and Rule 25-
5 6.0423(7), Florida Administrative Code (“F.A.C.”), as amended, with its execution of
6 the 2013 Settlement Agreement in late July 2013. As I described in my March 3, 2014
7 testimony, subsequent to execution of and until Commission approval of the 2013
8 Settlement Agreement, DEF commenced development of the process to start winding
9 down the LNP in an orderly fashion. This process was fully put in place after the
10 Commission voted to approve the 2013 Settlement Agreement on October 17, 2013.
11 The major component of the LNP wind down process is the LLE disposition, which
12 DEF is conducting pursuant to its disposition plan in its LLE Disposition
13 Memorandum. The LLE Disposition Memorandum was attached as Exhibit No.
14 ____ (CMF-5) to my March 3, 2014 direct testimony. In 2014, DEF continues to follow
15 its plan to disposition the remaining LNP LLE. The current status of the remaining
16 LNP LLE is attached as Exhibit No. ____ (CMF-8).

17 Additionally, on January 28, 2014, DEF notified the Consortium that DEF was
18 terminating the EPC Agreement pursuant to Article 22.4(a) of the EPC Agreement,
19 effective as of the date of the letter, because DEF was unable to obtain the COL by
20 January 1, 2014. The termination letter is attached as Exhibit No. ____ (CMF-9).

21 The only other work that DEF is performing at this time is the COLA work
22 necessary to obtain the COL from the NRC and major environmental permitting work
23 necessary to obtain the Section 404 permit from the U.S. Army Corps of Engineers.

REDACTED

1 DEF is continuing its efforts to obtain the COL from the NRC consistent with DEF's
2 agreement in the 2013 Settlement Agreement to exercise reasonable and prudent
3 efforts to obtain the COL.

4
5 **IV. LNP 2014 AND 2015 WIND-DOWN ACTIVITIES.**

6 **Q. Does DEF have actual/estimated costs in 2014 as a result of Levy wind-down**
7 **activities?**

8 A. Yes. DEF's actual/estimated 2014 costs are [REDACTED]. See 2014 Detail LNP
9 Schedule of Exhibit No. ___ (TGF-4) to Mr. Foster's testimony. The 2014 Detail
10 Schedule, lines 1b and 12e and 1d, shows actual/estimated costs for 2014 in the
11 following categories: wind-down costs in the amount of [REDACTED] and LLE
12 disposition costs in the amount of [REDACTED], respectively

13
14 **Q. Please describe the Levy wind-down activities and costs.**

15 A. Actual/estimated 2014 wind-down costs that are reasonably known at this time are
16 approximately [REDACTED]. Wind-down cost were incurred and will be incurred for (1)
17 storage, insurance, and quality assurance of the completed and partially completed
18 Levy LLE components until disposition – approximately [REDACTED]; (2) internal
19 Duke Energy labor to assist with disposition of the LLE – approximately [REDACTED];
20 (3) approximately [REDACTED] in estimated costs for external WEC support to gather
21 information from its LLE suppliers and assist with disposition of the LLE; and (4)
22 approximately \$0.4 million for regulatory and administrative wind-down support.
23 This category also includes payment of final invoices in the amount of approximately

1 [REDACTED] for module program development work to close out DEF's relationship
2 with Consortium member S&W under the cancelled EPC Agreement. DEF does not
3 include in this filing potential, future wind-down or LLE disposition costs or credits
4 that DEF cannot reasonably quantify at this time.

5
6 **Q. Please describe the LLE disposition activities and costs.**

7 A. LLE disposition costs include expenditures directly attributable to amounts paid for
8 the disposition of the Levy LLE, a reversal of an accrual for a milestone payment not
9 made in 2014, and an estimate of the upper limit of termination costs possibly due [REDACTED]

10 [REDACTED]

11 The [REDACTED] shown on Schedule 2014 Detail LNP includes a negotiated
12 settlement payment to terminate an LLE purchase order with WEC and sub-contractor
13 Tioga for the reactor coolant-loop (RCL) piping components of [REDACTED] in early
14 2014, and a reversal of an accrual for an RCL milestone payment of [REDACTED] that
15 was not made because of the cancellation of the purchase order for this equipment.

16 Also included is approximately [REDACTED], which reflects the [REDACTED]

17 [REDACTED]

18 [REDACTED]

19 [REDACTED]

20 [REDACTED]

21 [REDACTED]

22 [REDACTED]

23

REDACTED

1 **Q. Please explain DEF's settlement with WEC and Tioga for the Tioga LLE.**

2 A. Tioga is the supplier and manufacturer of the RCL piping Levy LLE. The RCL piping
3 started the manufacturing process in 2013. When DEF elected not to complete
4 construction of the LNP, DEF first authorized WEC to contact Tioga about Tioga's
5 willingness to place a manufacturing hold on the RCL piping to allow DEF additional
6 time to analyze the disposition of the equipment. Tioga responded that there would be
7 a cost associated with a manufacturing hold and a change order would be required.

8 Consequently, DEF authorized WEC to contact Tioga about its costs should DEF
9 decide to cancel the RCL piping purchase order and manufacturing of the piping.

10 Tioga provided WEC with an all-inclusive cancellation cost of [REDACTED]

11 [REDACTED]
12 [REDACTED] DEF evaluated the Tioga settlement offer
13 pursuant to DEF's LLE Disposition Plan guidelines. A copy of the LLE Disposition
14 Plan was included as Exhibit No. ____ (CMF-5) to my March 3, 2014 testimony in this
15 docket. Based on the evaluation of the available options under the LLE Disposition
16 Plan, which included quantitative and qualitative factors, DEF determined that the
17 settlement was the most cost-effective option for DEF and its customers. Acceptance
18 of the settlement resulted in a minimum net savings of [REDACTED] to DEF's
19 customers compared to the other available options. DEF, accordingly, accepted the
20 offer and instructed WEC to terminate the purchase order with Tioga on January 9,
21 2014. My Exhibit No. ____ (CMF-10) further explains DEF's evaluation of the Tioga
22 settlement offer and the net savings to customers that resulted from acceptance of that

1 offer. Exhibit No. __ (CMF-11) is DEF's letter to WEC confirming that DEF accepted
2 the Tioga LLE disposition settlement offer.

3
4 **Q. What is the disposition status of the remaining Levy LLE?**

5 A. The disposition status of the remaining Levy LLE is provided in Exhibit No. __
6 (CMF-8) to my testimony. Fabrication is complete for two of the remaining Levy
7 LLE that must be dispositioned. These are the SG Tubing and Variable Frequency
8 Drives ("VFDs"). The other Levy LLE items were suspended in 2010 as part of the
9 April 2009 notice of partial suspension of the EPC Agreement, which was reflected in
10 Amendment Three to the EPC Agreement and, therefore, manufacturing had not
11 started or, if manufacturing was underway, it was suspended and the LLE remains
12 only partially complete. The Levy LLE items that were completed and even some or
13 all of the suspended Levy LLE components, based on the status of fabrication when
14 the LLE purchase order was suspended and the interest in the items, may be sold to
15 other interested parties. Accordingly, DEF has followed its LLE Disposition Plan and
16 marketed the complete and unfinished Levy LLE components to Duke Energy
17 affiliates, to external utilities, and to the external utility parts market. We have also
18 worked with Duke Energy Supply Chain personnel to compile appropriate bidders
19 lists, including AP1000 utilities, potential non-nuclear buyers, and scrap buyers. The
20 bid event is targeted to commence in May 2014 for the Levy LLE components. DEF
21 will evaluate any bid responses it receives and accept them if they are the most cost-
22 effective LLE disposition option for DEF's customers.

23

1 **Q. How has DEF made LLE disposition decisions?**

2 A. A graphical representation of this process is attached as Exhibit No. ___(CMF-12) to
3 my testimony. As shown there, DEF identified several LLE disposition options. DEF
4 vetted and eliminated the option of storing the LLE for future use. As such, DEF is
5 focusing its efforts on disposing of the Levy LLE either through sale or scrap.

6
7 **Q. How has DEF marketed the Levy LLE to potential buyers?**

8 A. Marketing the Levy LLE is a challenge since most of the Levy LLE is specific to the
9 AP 1000 design. To address the challenges presented by the limited market, DEF is
10 taking a multi-pronged approach to its LLE disposition efforts in an effort to maximize
11 the potential value of the LLE. DEF asked WEC if it was interested in the LLE, DEF
12 asked WEC to evaluate the market for the LLE, DEF explored opportunities internal
13 to Duke Energy for use of the LLE, and DEF reached out independently to current and
14 potential AP 1000 customers regarding their interest. WEC was not interested in
15 purchasing the Levy LLE and WEC was not interested in any cost-sharing
16 arrangement to store the LLE for future WEC AP1000 projects. Other storage options
17 for future use were not viable for reasons that I discussed in my March 3, 2014 direct
18 testimony. As a result, DEF is pursuing the LLE disposition option.

19 DEF reached out to Duke Energy internal affiliates to gauge their interest in
20 acquiring any of the remaining Levy LLE. DEF asked WEC to contact external
21 utilities with existing or potential AP1000 nuclear power plants, including
22 international projects, to see if they were interested in acquiring the Levy LLE. DEF
23 simultaneously reached out on its own to utilities with existing AP1000 nuclear power

1 plant projects to see if they were interested in purchasing the Levy LLE. DEF is also
2 working with WEC to determine if any of the Levy LLE suppliers are interested in
3 purchasing the remaining LLE components for themselves or for re-sale to third
4 parties and to determine the salvage cost and value for the remaining Levy LLE.
5 Finally, DEF is initiating a bid event with potential buyers, including the same utilities
6 with AP1000 projects that DEF had previously directly contacted about their interest
7 in the Levy LLE, to determine if there is any interest in the acquisition of the
8 remaining Levy LLE items. As a result, DEF has effectively canvassed the market for
9 potential purchasers for the remaining Levy LLE. DEF has found no interested buyer
10 so far, however, DEF is still waiting to hear if any of the LLE suppliers are interested
11 in buying the Levy LLE and for the results of the bid event for the remaining Levy
12 LLE.

13
14 **Q. Does DEF project that it will incur costs in 2015 related to Levy wind-down and**
15 **LLE disposition?**

16 A. Yes. While DEF expects to conclude its LLE disposition efforts in 2014, DEF is
17 currently projecting minimal wind-down costs for 2015 as shown on lines 10 a –c of
18 the 2015 Detail LNP Schedule attached as Exhibit No. ___(TGF-4) to Mr. Foster's
19 testimony. As I mentioned above, this projection does not take into account any costs
20 that DEF simply is not able to reasonably quantify at this time.

1 **Q. Does DEF have transmission-related costs for the LNP in 2014 and 2015?**

2 A. No. The Levy transmission interconnection studies were cancelled and DEF withdrew
3 its interconnection queue requests for the LNP. Accordingly, DEF does not have any
4 current or future LNP transmission-related costs.

5
6 **Q. What steps has DEF taken to minimize Levy cost expenditures under the EPC
7 Agreement?**

8 A. As I discussed in my March 3, 2014 testimony, DEF communicated early and often
9 with the Consortium in 2013 regarding the pending changes to the Florida Nuclear
10 Cost Recovery statute and rule and associated qualitative risk to the project.
11 Following the decision to cancel the LNP as part of the 2013 Settlement Agreement,
12 DEF also took the proactive steps I described in my confidential addendum to my
13 March 3, 2014 testimony to work with WEC to obtain LLE disposition information.
14 DEF has only requested the limited and targeted support from the Consortium that is
15 necessary to ensure reasonable LLE disposition decisions are made. To this end, DEF
16 initially focused on the LLE that was being actively fabricated, because that LLE
17 involved the most significant, on-going contractual cost obligations for customers, and
18 DEF timely closed out these LLE purchase orders, with savings in the contractual
19 costs otherwise owed under these purchase orders. These LLE disposition decisions
20 are described above for the Tioga LLE and in my March 3, 2014 testimony for the
21 Mangiarotti LLE. Also, in the first quarter of 2014, DEF finalized an agreement with
22 S&W to close out all of DEF's obligations to S&W under the EPC Agreement. This
23 agreement included a waiver from S&W of all claims under the EPC Agreement.

REDACTED

1 Finally, because DEF could not obtain the COL from the NRC by January 1, 2014,
2 DEF terminated the EPC Agreement in late January of 2014, after disposition of the
3 Tioga LLE, the final LLE component being manufactured. DEF's decision to
4 terminate the EPC Agreement under this provision means that DEF is not obligated to
5 pay WEC a termination fee. Under this provision, DEF does not have to pay WEC the
6 termination fee if either party terminated the EPC Agreement because DEF was
7 unable to obtain the COL from the NRC by January 1, 2014.

8
9 **Q. Has DEF minimized costs?**

10 A. Yes. Overall, the Mangiarotti and Tioga settlements represent a savings of [REDACTED]
11 [REDACTED] through 2015 versus what DEF otherwise was contractually obligated to
12 spend.

13
14 **Q. What is the status of DEF's relationship with WEC?**

15 A. Prior to termination of the EPC Agreement, DEF was working with WEC to
16 disposition the Levy LLE. As I explained in the confidential attachment to my March
17 3, 2014 testimony, however, DEF's attempts to work with WEC to reasonably
18 disposition the Levy LLE and wind down the project activities and costs were slowed
19 by the parties' inability to agree on reasonable commercial terms to compensate WEC
20 for their efforts to disposition the Levy LLE following termination of the EPC
21 Agreement. WEC further made claims for changes orders and for the termination fee
22 and additional termination costs that, in DEF's view, were unfounded and
23 unreasonable. The parties attempted to work through their differences, however, the

1 parties were sufficiently far apart in late 2013 that DEF concluded that the window of
2 opportunity to reasonably work with WEC to close out the project was rapidly closing.
3 As a result, DEF focused its efforts on the disposition of the LLE components being
4 manufactured in 2013 and was able to settle with WEC and both suppliers of this LLE
5 -- Mangiarotti and Tioga -- by mid-January 2014.

6 When DEF terminated the EPC Agreement, DEF did propose a time and
7 materials agreement with WEC that is consistent with the time and materials terms in
8 the Master Services Agreement (“MSA”), under which WEC supports the Duke
9 Energy operating fleet, for WEC’s continued help with the disposition of the
10 remaining Levy LLE with WEC’s suppliers, but WEC would not agree to use this
11 MSA. The parties have been working on a commercial agreement to compensate
12 WEC for assisting DEF with the LLE disposition with WEC’s suppliers. As of the
13 end of April, 2014, negotiations are ongoing.

14 DEF also proposed a contractual arrangement with WEC to allow DEF to
15 continue to use WEC’s confidential and proprietary AP1000 information for the
16 continuing Levy COLA work with the NRC after termination of the EPC Agreement.
17 DEF, in fact, proposed the same contractual arrangement that WEC has with Duke
18 Energy for access to WEC’s confidential and proprietary AP1000 information for the
19 Lee AP1000 nuclear power plant COLA and COLA support. WEC initially refused to
20 agree to this arrangement.

21 Recently, however, WEC indicated its willingness to consider a Memorandum
22 of Understanding (“MOU”) agreement with DEF to provide additional COLA support
23 and grant DEF a license to use the confidential and proprietary AP1000 information

1 for the Levy COLA. In the interim, and contingent upon the execution of a
2 satisfactory MOU agreement for COLA support work, WEC extended DEF a
3 revocable license to use its AP1000 proprietary data for the Levy COLA.

4 As it has done since termination of the EPC Agreement, DEF will continue to
5 work with WEC to establish a definite MOU or some other agreement for WEC's
6 COLA support work and DEF's access to the proprietary AP1000 information for the
7 Levy COLA.

8
9 **Q. Was there a way to reasonably resolve WEC's claims without litigation?**

10 A. No. WEC has made it abundantly clear to DEF after DEF cancelled the Levy project
11 in late July 2013 that WEC wants substantial additional monies from DEF for
12 cancelling the project and terminating the EPC Agreement. These potential claims,
13 the dates they were first made known to DEF, and WEC's and DEF's positions on
14 them are explained in more detail in the confidential attachment to my March 2014
15 testimony. Faced with these claims in late 2013, DEF was well aware that litigation
16 with WEC was unavoidable and imminent. As a result, and to ensure that their
17 disputes were resolved in North Carolina as provided in the EPC Agreement, DEF
18 filed a lawsuit against WEC in the United States District Court for the Western
19 District of North Carolina on March 28, 2014.

20 DEF sued WEC for breach of contract for a refund of \$54.1 million in
21 payments to WEC for turbine generator and reactor vessel internals manufacturing
22 work that was never started as intended when the payments were made. DEF also
23 asked for a declaratory judgment by the Court that (1) DEF does not owe WEC the

1 \$30 million termination fee under the EPC Agreement that WEC wrongly claims DEF
2 owes, because no such fee is owed if the EPC Agreement is terminated due to DEF's
3 inability to obtain the COL by January 1, 2014; and (2) DEF does not owe WEC
4 additional, substantial termination costs in excess of \$480 million for alleged WEC
5 Standard Plant design and related work that WEC never billed DEF or requested a
6 change order for prior to termination, and that DEF paid for through a \$9.45 million
7 "investment recovery/royalty" payment, and \$56 million in Design Finalization
8 payments required under the EPC Agreement and Amendment 3 to the EPC
9 Agreement.

10 As expected, WEC filed a lawsuit outside the agreed-upon venue of North
11 Carolina on March 31, 2014 in the United States District Court for the Western
12 District of Pennsylvania. WEC claims DEF breached the EPC Agreement by failing
13 to pay WEC the \$30 million termination fee and \$482 million in termination costs for
14 Standard Plant and related work that WEC did not bill DEF for until March 2014.
15 WEC alternatively claims that DEF owes WEC for the \$482 million in Standard Plant
16 design and related work it never billed DEF because DEF would allegedly be unjustly
17 enriched if it received the benefit of these alleged services without paying WEC for
18 them.

19
20 **Q. What does DEF plan to do with these lawsuits?**

21 A. DEF intends to vigorously pursue its claims and to vigorously defend against the
22 claims WEC has brought. The ultimate resolution of these claims, however, will be by
23 a Court and DEF cannot predict the outcome of this litigation at this time.

1 **Q. Has this dispute impacted DEF's ability to project its costs in 2015?**

2 A. Yes. DEF expects to incur litigation costs pursuing its claims against WEC and
3 defending against WEC's claims against DEF. DEF, however, cannot reasonably
4 project the extent or nature of this litigation at this time and, therefore, DEF cannot
5 reasonably project its litigation costs with WEC. Additionally, as I mentioned above,
6 DEF has requested information from WEC's suppliers of the remaining LLE regarding
7 their interest in acquiring the LLE for themselves or third parties. In the event they are
8 not interested in acquiring the LLE, DEF also requested information on the salvage
9 costs and value of the remaining LLE. Due to these variable factors, DEF cannot
10 reasonably predict the outcome of the results of this information, when it is received,
11 on the final disposition decisions and costs or credits for the remaining Levy LLE.
12

13 **V. LEVY COMBINED OPERATING LICENSE APPLICATION UPDATE.**

14 **Q. Can you provide an update on the status of the Levy COL application?**

15 A. Yes. To begin with, and as I have previously explained in prior NCRC proceedings,
16 there are three parts to the NRC COLA review process and all three parts must be
17 complete before the NRC will issue a COL. Those three parts of the NRC COLA
18 review process are: (i) the environmental review process; (ii) the safety review
19 process; and (iii) the formal hearing process. The environmental review was complete
20 when DEF received the Levy final environmental impact statement ("FEIS") on April
21 27, 2012. The remaining two parts of the NRC COLA review process are incomplete
22 although steps in these review processes have been completed.

1 The Final Safety Evaluation Report (“FSER”) for the Levy COL has not been
2 issued. The Advanced Safety Evaluation Report (“ASER”), was initially completed
3 with no open items on September 15, 2011, however, DEF was required to revise the
4 Levy COLA to incorporate NRC changes resulting from Fukushima and other changes
5 required by NRC Staff. In addition, a significant required design change was
6 identified by WEC that is critical path to completion of NRC review. The ASER must
7 be revised to incorporate these changes before the NRC review can be finalized. The
8 ACRS has requested to review the WEC design change after completion of NRC
9 review and issuance of the revised ASER. This is scheduled to be complete in
10 December 2014. The ACRS review and report is followed by NRC review and
11 issuance of the FSER. NRC issuance of the FSER completes the NRC safety review
12 for the LNP. The current NRC target for issuance of the LNP FSER is March 2015.

13 The final step in the NRC COLA process for the issuance of the Levy COL is
14 the NRC formal hearing process. There are two parts to the formal hearing process:
15 (1) a contested hearing before the NRC Atomic Safety and Licensing Board
16 (“ASLB”), and (2) a mandatory hearing before the NRC. The contested hearing was
17 conducted in the fall of 2012 and on March 26, 2013, the NRC ASLB issued its ruling
18 in DEF’s favor on all issues. The mandatory hearing for the LNP COL is conducted
19 by the NRC Commissioners. The LNP COLA mandatory hearing, however, cannot
20 commence until the LNP FSER is issued. The Company currently expects the NRC to
21 complete the mandatory hearing in July of 2015. This expectation is based on a four-
22 month period for completion of NRC mandatory hearings from FSER issuance

1 currently estimated for March of 2015. Exhibit No. ____ (CMF-13) to my direct
2 testimony contains the current Levy COLA schedule.

3
4 **Q. Will the NRC's Waste Confidence Decision and Rule review affect the current**
5 **Levy COLA schedule?**

6 A. No, DEF does not expect the NRC Waste Confidence Decision and Rule review
7 process to impact the Levy COLA schedule. The NRC is on schedule to complete this
8 process and issue a new Waste Confidence Decision and Rule. The NRC conducted
9 an EIS scoping period between October 2012 and January 2013 for the proposed Rule
10 and published a scoping summary report in early March, 2013. The NRC then
11 published the draft generic EIS for the proposed Waste Confidence Rule in September
12 2013. All of these steps in the NRC review process were completed on time under the
13 NRC's Waste Confidence milestone schedule. Under that schedule, the NRC plans to
14 issue the final EIS for the Waste Confidence Rule, the Final Waste Confidence
15 Decision, and the Final Waste Confidence Rule in October 2014. DEF currently
16 expects the NRC to issue the final Waste Confidence Decision and Rule by this date.

17
18 **Q. When does DEF expect to receive the COL for Levy?**

19 A. The Company currently expects the NRC to issue the Levy COL in August of 2015.
20
21
22

1 **Q. Why has the estimated receipt date for the Levy COL been extended from the**
2 **end of 2014 to August 2015?**

3 A. There was a significant delay in the NRC Levy COLA review because WEC failed to
4 provide information in a timely manner that the NRC needed to review a standard
5 design change by WEC to the AP1000 design for the condensate return.

6
7 **Q. What was the issue with the WEC condensate return design change?**

8 A. The WEC design change for the condensate return modifies the interior of the
9 containment vessel to provide additional gutter piping to support the condensate return
10 portion of the Passive Core Cooling System. WEC identified this issue in November
11 2012 when testing conducted by WEC in response to the on-going review of the
12 AP1000 design in Great Britain confirmed that the design assumption used in the
13 AP1000 design certification for the amount of condensate return was not correct.
14 WEC and DEF recognized in December 2012 that this design error required a
15 departure from the approved design and inclusion of a design change in the Levy
16 COLA to support the NRC safety review prior to issuance of the Levy COL. DEF
17 notified the NRC that a COLA change would be submitted to address this emergent
18 change.

19 DEF and WEC briefed the NRC on this issue in March 2013, explaining that a
20 design change and exemption request were required. WEC informed the NRC that it
21 would provide the NRC necessary information regarding the design change by mid-
22 April 2013 and confirmatory calculations supporting the change by May 17, 2013 for

1 NRC review. DEF submitted its revisions to the Levy COLA and a request for
2 exemption to implement this design change in its COLA on April 18, 2013.

3 WEC did not inform DEF that it would not meet its promised schedule to
4 supply the supporting calculations for the design change to DEF by May 17, 2013
5 until May 15, 2013. On May 23, 2013, WEC told DEF that the containment cooling
6 condensate return calculations necessary to support the design change would not be
7 available until September 2013, almost another four months. DEF notified the NRC
8 of this delay and the NRC issued a revised schedule letter for the Levy COLA review
9 on June 25, 2013 that delayed issuance of the Levy FSER until September 2014 citing
10 WEC's delay in providing it with the supporting calculations for this design change as
11 the reason for the schedule delay.

12 On August 28, 2013, WEC informed DEF that WEC would not meet its
13 revised deadline to provide the supporting calculations for its design change by
14 September 4, 2013. WEC's revised schedule included another 40-day schedule delay
15 to provide the supporting calculations by October 14, 2013. WEC did not meet this
16 revised schedule. WEC did not complete the design calculations that enabled the
17 NRC to resume audit review of the detailed design information for this design change
18 for the Levy COLA until January 15, 2014, and, only on February 6, 2014, did WEC
19 finally provide DEF all of the information required to supplement the Levy COLA
20 with respect to this design change.

21 As a result of WEC's actions, at this time, the NRC expects to complete review
22 and preparation of the FSER for the Levy COL by March 2015. This delay is the

1 reason that DEF does not expect to receive the Levy COL until August 2015 at this
2 time.

3
4 **Q. What is the status of the environmental permits for the Levy COL?**

5 A. DEF expects the U.S. Army Corps of Engineers (“ACOE”) to issue the Section 404
6 Permit for the Levy COLA in 2014. The ACOE sent DEF draft guidance for the
7 determination of secondary impacts associated with wetlands that is necessary for
8 issuance of the Section 404 permit and meetings were held on March 18 and April 9,
9 2014 to discuss this guidance. As a result, DEF expects to reach a consensus with the
10 ACOE on how to determine indirect (secondary) impacts for wetland mitigation. DEF
11 also submitted a revised Environmental Monitoring Plan (“EMP”) along with a
12 Request for Additional Information (“RAI”) response to the ACOE and the ACOE
13 accepted the revised EMP for the Levy project as a condition for issuance of the
14 Section 404 permit. This resolves an issue with the ACOE regarding planned
15 groundwater use at the site. As a result, DEF expects to receive the Section 404
16 permit for the Levy project from the ACOE this year.

17
18 **Q. Are there any issues that may prevent DEF from receiving the COL?**

19 A. Possibly, yes, however DEF currently expects that these issues should be resolved. As
20 I explained above, WEC and DEF are still negotiating an agreement for WEC to
21 continue COLA support work and to provide DEF continued access to its proprietary
22 AP1000 data for the Levy COLA. Finalization of this agreement is necessary for DEF
23 to continue with its Levy COLA to obtain the COL. If DEF is unable to reach an

1 agreement with WEC to support the Levy COLA and provide DEF the access it needs
2 to the AP1000 information, then, DEF will not be able to continue with the Levy
3 COLA and DEF may not be able to obtain the COL from the NRC.
4

5 **Q. What are DEF's current plans for the Levy project if DEF receives the COL?**

6 A. DEF cancelled construction of the Levy project with the execution of the 2013
7 Settlement Agreement and DEF has now terminated the EPC Agreement. DEF,
8 therefore, does not have a contract to build the Levy nuclear power plants and DEF
9 has no definite plan to construct them at this time. DEF will reassess plans for the
10 construction of nuclear power plants at the Levy site after receipt of the COL. DEF
11 does plan to continue its work to obtain the COL by August 2015, if it remains
12 reasonable for the Company to do so. If DEF timely obtains the COL, DEF currently
13 plans to maintain the COL to preserve the option of building new nuclear at the Levy
14 site based on, among other factors, energy needs, project costs, carbon regulation,
15 natural gas prices, existing or future legislative provisions for cost recovery, and the
16 requirements of the COL.
17

18 **VI. PROJECT MANAGEMENT AND COST CONTROL OVERSIGHT.**

19 **Q. Has the Company implemented any additional project management and cost
20 control oversight mechanisms for the LNP since your testimony was filed on
21 March 3, 2014?**

22 A. No, the Company has not implemented any significant, additional project management
23 or cost control oversight policies or procedures for the LNP since my March 3, 2014

1 direct testimony. The Company continues to utilize the Company policies and
2 procedures that I described in that testimony to ensure that wind-down costs for the
3 LNP are reasonably and prudently incurred. The Company will continue to review
4 policies, procedures, and controls on an ongoing basis, however, and make revisions
5 and enhancements based on changing business conditions, organizational changes, and
6 lessons learned, as necessary. This process of continuous review of our policies,
7 procedures, and controls is a best practice in our industry and is part of our existing
8 Levy project management and cost control oversight. Additionally, the Levy project
9 is reviewed by the Senior Management Committee (“SMC”) on at least a quarterly
10 basis and more on an as needed basis. Financial decisions are taken to the Transaction
11 and Risk Committee (“TRC”) and the Board of Directors as necessary pursuant to the
12 Approval of Business Transactions (“ABT”) policy. Moreover, as I discussed in my
13 March 3, 2014 testimony, going forward into 2014 the Company continues to ensure
14 that all COLA-related costs are segregated out and not included in the NCRC.

15
16 **VII. CONCLUSION.**

17 **Q. Has DEF acted in a reasonable and prudent manner to wind-down the Levy**
18 **project and disposition the Levy LLE?**

19 A. Yes. DEF dispositioned the LLE in active fabrication and consequently reduced
20 ongoing contractual costs, resulting in savings compared to the committed contractual
21 payments, for DEF and its customers. DEF further reduced WEC’s activities and
22 costs to assist with the LLE disposition and wind down the project. DEF terminated
23 the EPC Agreement when it was unable to obtain the COL by January 1, 2014, and,

1 does not owe a termination fee under the EPC Agreement. DEF closed out its
2 relationship with S&W in a timely and cost-effective manner for DEF and its
3 customers. DEF intends to vigorously pursue and defend its rights under the EPC
4 Agreement in the current litigation with WEC. DEF's actions have been and will
5 continue to be reasonable and prudent for DEF and its customers.

6

7 **Q. Does this conclude your direct testimony?**

8 A. Yes it does.

IN RE: NUCLEAR COST RECOVERY CLAUSE

BY DUKE ENERGY FLORIDA, INC.

FPSC DOCKET NO. 140009-EI

DIRECT TESTIMONY OF CHRISTOPHER M. FALLON

1 **I. INTRODUCTION AND QUALIFICATIONS.**

2 **Q. Please state your name and business address.**

3 A. My name is Christopher M. Fallon. My business address is 526 South Church
4 Street, Charlotte, North Carolina 28202.

5

6 **Q. By whom are you employed and in what capacity?**

7 A. I am employed by Duke Energy Corporation (“Duke Energy”) as Vice President
8 of Nuclear Development. Duke Energy Florida, Inc. (“DEF” or the “Company”)
9 is a fully owned subsidiary of Duke Energy.

10

11 **Q. Please summarize your educational background and work experience.**

12 A. I received Bachelor of Science and Master of Science degrees in electrical
13 engineering from Clemson University in 1989 and 1990, respectively. I am also a
14 registered professional engineer in North Carolina. I began my career with Duke
15 Energy’s predecessor company Duke Power in 1992 as a power quality engineer.
16 After a series of promotions, I was named manager of transmission planning and
17 engineering studies in 1999, general manager of asset strategy and planning in
18 2006, and the managing director of strategy and business planning for Duke
19 Energy starting in 2007. In this role, I had responsibility for developing the

1 strategy for the company's operating utilities; commercial support for operating
2 utility activities such as acquisition of generation assets and overseeing Requests
3 for Proposals for renewable generation resources; and major project/initiative
4 business case analysis. In 2009, I was named Vice President, Office of Nuclear
5 Development for Duke Energy. In that role, I was responsible for furthering the
6 development of new nuclear generation in the Carolinas and Midwest. This
7 included identifying and developing nuclear partnership opportunities, as well as
8 integrating and advancing Duke Energy's plans for the proposed Lee Nuclear
9 Station in Cherokee County, S.C. I was promoted to my current position on July
10 1, 2012.

11
12 **Q. Please describe your responsibilities for the Levy Nuclear Project ("LNP") as**
13 **Vice President of Nuclear Development.**

14 A. As Vice President of Nuclear Development, I am responsible for the licensing and
15 engineering design for the Levy nuclear power plant project ("LNP" or "Levy").
16 I am also responsible for the direct management of the Engineering, Procurement,
17 and Construction ("EPC") Agreement for the LNP with Westinghouse
18 Corporation ("WEC") and Stone & Webster, Inc. Together, WEC and Stone &
19 Webster are the Consortium under the EPC Agreement. In addition to these
20 responsibilities, I am responsible for the LNP project control functions. I
21 provided direct testimony to the Florida Public Service Commission ("PSC" or
22 the "Commission") in the 2013 nuclear cost recovery clause ("NCRC") docket for
23 the Company with respect to the LNP.

24

1 **II. PURPOSE AND SUMMARY OF TESTIMONY.**

2 **Q. What is the purpose of your direct testimony?**

3 A. My direct testimony supports DEF's request for cost recovery and a prudence
4 determination by the Commission for (1) the Company's LNP generation and
5 transmission costs incurred from January 2012 through December 2012, and (2)
6 DEF's 2012 LNP project management, contracting, and cost controls, pursuant to
7 (i) the Nuclear Cost Recovery Rule, Rule 25-6.0423, Florida Administrative Code
8 (F.A.C.); and (ii) the Commission's Order No. PSC-13-0598-FOF-EI approving
9 the Revised and Restated Stipulation and Settlement Agreement ("2013
10 Settlement Agreement"). The prudence determinations of DEF's 2012 LNP costs
11 and its 2012 LNP project management, contracting, and oversight controls, were
12 deferred from the 2013 NCRC docket to the 2014 NCRC docket when the
13 Commission granted DEF's Motion to Defer and Alternative Petition for a
14 Temporary Variance or Waiver of Rule 25-6.0423(5)(c)2, F.A.C. ("Motion to
15 Defer") in Order No. PSC-13-0493-FOF-EI in the 2013 NCRC docket.

16 My direct testimony also supports DEF's request for cost recovery and a
17 prudence determination for (1) the Company's LNP generation and transmission
18 costs incurred from January 2013 through December 2013, and (2) DEF's 2013
19 LNP project management, contracting, and cost controls pursuant to Rule 25-
20 6.0423(7), F.A.C. and Order No. PSC-13-0598-FOF-EI.

21 Lastly, I will explain that the Company elected not to complete the LNP in
22 the 2013 Settlement Agreement and describe how DEF is implementing a prudent
23 LNP long lead equipment ("LLE") disposition plan and project wind-down

1 subsequent to Commission approval of the 2013 Settlement Agreement in
2 October 2013.

3
4 **Q. Do you have any exhibits to your testimony?**

5 A. Yes, I am sponsoring the following exhibits to my testimony:

- 6 • Exhibit No. ____ (CMF-1), the confidential Direct Testimony and Exhibits of
7 Christopher M. Fallon in Support of Actual Costs on behalf of Progress
8 Energy Florida, Inc. in Docket No. 130009-EI;
- 9 • Exhibit No. ____ (CMF-2), a confidential chart of the Company's LNP LLE
10 purchase order disposition status entering 2013;
- 11 • Exhibit No. ____ (CMF-3), the confidential Mangiarotti LNP LLE final
12 disposition settlement memo;
- 13 • Exhibit No. ____ (CMF-4), the confidential November 7, 2013 DEF letter to
14 the Consortium accepting the Mangiarotti LNP LLE final disposition
15 settlement offer;
- 16 • Exhibit No. ____ (CMF-5), the confidential LNP LLE Disposition Plan
17 memo;
- 18 • Exhibit No. ____ (CMF-6), a confidential memorandum and attachments
19 addressing the process for LLE disposition and wind down of the LNP with
20 WEC subsequent to DEF's decision not to complete the LNP with the
21 execution of the 2013 Settlement Agreement; and
- 22 • Exhibit No. ____ (CMF-7), a list of the merged and reconciled Duke Energy
23 and Progress Energy Project Management and Fleet Operating Procedures
24 applicable to the LNP in 2013.

1 In addition, as reflected in my March 2013 direct testimony which is incorporated
2 and made a part of my current testimony in Exhibit No. ____ (CMF-1), I co-
3 sponsor the cost portions of the Schedules for the 2012 LNP Nuclear Filing
4 Requirements (“NFRs”), and sponsor capital expenditure variances and contract
5 information, which are included as Exhibit No. ____ (TGF-1) to Mr. Thomas G.
6 Foster’s testimony. I will also be co-sponsoring the cost portions of the 2013
7 Detail Schedule, and sponsor Appendices D and E, which are included as part of
8 Exhibit No. ____ (TGF-2) to Mr. Foster’s testimony. Appendix D is a description
9 of the major tasks and reflects capital expenditure variance explanations.
10 Appendix E is a list of the contracts executed in excess of \$1.0 million and
11 provides details for those contracts.

12 All of these exhibits, schedules, and appendices are true and accurate.

13
14 **Q. Do you have any changes to your direct testimony regarding the prudence of**
15 **the 2012 LNP costs and the LNP project management, contracting, and cost**
16 **oversight controls that you included as an exhibit to your current testimony?**

17 A. Yes, I have one change. Progress Energy Florida, Inc. is now Duke Energy
18 Florida, Inc. as a result of the merger between Duke Energy and Progress Energy,
19 Inc. Otherwise, the information in my March 2013 direct testimony attached as
20 Exhibit No. ____ (CMF-1) to my current testimony remains true and accurate.

21
22 **Q. What is the current status of the LNP?**

23 A. The Company elected not to complete construction of the LNP pursuant to the
24 nuclear cost recovery statute and rule, Section 366.93(6), Florida Statutes, and

1 Rule 25-6.0423(7), F.A.C., as amended, with its execution of the 2013 Settlement
2 Agreement in late July 2013. Subsequent to execution of and until Commission
3 approval of the 2013 Settlement Agreement, DEF commenced development of the
4 process to start winding down the LNP in an orderly fashion. This process was
5 fully put in place after the Commission voted to approve the 2013 Settlement
6 Agreement on October 17, 2013. The major component of the LNP wind down
7 process is the LLE disposition.

8 DEF, however, continues its work to obtain the LNP Combined Operating
9 License (“COL”) from the Nuclear Regulatory Commission (“NRC”) pursuant to
10 DEF’s agreement in the 2013 Settlement Agreement to exercise reasonable and
11 prudent efforts to obtain the COL from the NRC by March 31, 2015. As a result,
12 DEF managed the work necessary to obtain the LNP COL throughout 2013
13 pursuant to the Company’s project management, contracting, and cost control
14 policies and procedures for the LNP.

15
16 **Q. What impact does this decision have on this docket?**

17 A. Because the Company decided not to complete the LNP at the end of July 2013,
18 when it executed the 2013 Settlement Agreement, and that Agreement was not
19 approved by the Commission until mid-October 2013, this decision had minimal
20 impact on most of DEF’s 2013 LNP costs which were committed to or incurred
21 during the first ten months of 2013. DEF did commence the process to wind
22 down the LNP after execution of the 2013 Settlement Agreement, including the
23 development of a LLE disposition plan, but that process was not fully
24 implemented until the Commission approved that Agreement. Consequently, the

1 bulk of DEF's 2013 LNP costs were committed to or incurred at a time when the
2 project status and the Company's project management, contracting, and cost
3 control policies and procedures were similar to those used in 2012 that the
4 Commission has previously reviewed.

5 DEF did incur some LNP wind down costs in 2013 related to the
6 disposition of some LLE and DEF seeks to recover its prudent LNP wind down or
7 exit costs pursuant to Section 366.93(6), Rule 25-6.0423(7), and the 2013
8 Settlement Agreement approved by the Commission in Order No. PSC-13-0598-
9 FOF-EI. These LNP LLE disposition and wind down or project exit costs will
10 continue to be incurred in 2014.

11 DEF also incurred continued costs to obtain the LNP COL from the NRC
12 in 2013. DEF is permitted to recover its prudent 2013 COL costs pursuant to the
13 2013 Settlement Agreement and DEF, accordingly, seeks recovery of its prudent
14 2013 LNP COL costs. DEF will continue to incur COL costs for the LNP in
15 2014, but DEF is not permitted under the 2013 Settlement Agreement to recover
16 these costs from customers under Section 366.93 and Rule 25-6.0423. DEF
17 therefore will not seek to recover LNP COL costs after 2013 in the NCRC docket.

18

19 **Q. Please summarize your testimony.**

20 A. DEF prudently incurred its LNP costs in 2012 and 2013. DEF prudently incurred
21 necessary licensing and engineering costs in 2012 and 2013 to advance the
22 licensing and permitting processes to obtain the COL and required environmental
23 permits for the LNP. DEF further incurred costs in 2012 and 2013 pursuant to its
24 contractual commitments under the EPC Agreement and other LNP contracts for

1 strategic transmission corridor real estate acquisitions and wetland mitigation, and
2 corresponding project management activities. DEF appropriately minimized
3 these costs when DEF decided not to complete construction of the LNP with the
4 2013 Settlement Agreement. Unnecessary project activities were eliminated and
5 a LLE disposition plan was developed and implemented. DEF incurred only
6 those contractually committed or necessary costs for the LNP in 2013 after DEF's
7 decision not to complete construction of the LNP. DEF has prudently managed
8 the LNP in 2012 and 2013, consistent with merged policies and procedures that
9 implement best practices for Duke Energy, that in substance are similar to the
10 project management, contracting and cost control policies and procedures
11 previously audited by the Commission Staff and reviewed and approved by the
12 Commission.

13
14 **III. 2013 LNP CAPITAL COSTS.**

15 **Q. What were the total LNP actual 2013 costs?**

16 A. Total actual LNP costs for 2013, inclusive of transmission and generation costs,
17 were [REDACTED]. This is about [REDACTED] less than DEF's actual/estimated
18 costs for 2013. The reasons for this variance are described below.

19
20 **Q. Please describe the categories of work that were performed for the LNP in**
21 **2013 to incur these costs.**

22 A. DEF performed work and incurred generation preconstruction and generation and
23 transmission construction costs in the following categories of expenditures for the
24 LNP in 2013: (1) licensing, (2) engineering, design and procurement, (3) real

1 estate acquisition and mitigation, (4) power block engineering and procurement,
2 and (5) other.

3
4 **A. GENERATION COSTS.**

5 **i. Preconstruction Generation Costs Incurred.**

6 **Q. Did the Company incur any Generation preconstruction costs for the LNP in**
7 **2013?**

8 A. Yes. As reflected on the 2013 Detail Schedule, the Company incurred
9 preconstruction costs in the categories of (1) License Application and (2)
10 Engineering, Design, and Procurement.

11
12 **Q. For the License Application costs, please identify what those costs are and**
13 **why the Company had to incur them.**

14 A. As reflected on Line 1a of the 2013 Detail Schedule, the Company incurred
15 License Application costs of [REDACTED] in 2013. These costs were incurred for
16 licensing and permitting activities supporting the LNP Combined Operating
17 License Application (“COLA”).

18 DEF continued to work with the NRC on the LNP COLA in 2013 to
19 advance the COLA and obtain final NRC approval and issuance of the LNP COL.
20 This included work for the NRC Advisory Committee on Reactor Safeguards
21 (“ACRS”) subcommittee review of the Levy evaluation of the updated Central
22 Eastern United States (“CEUS”) seismic source data. In 2013, the ACRS
23 subcommittee reviewed the Levy CEUS evaluation and determined there were no
24 outstanding issues.

1 DEF also performed the licensing and engineering work necessary to
2 respond to additional NRC Requests for Additional Information (“RAIs”) and
3 NRC Bulletins that affected the LNP COLA. DEF further performed the
4 licensing and technical engineering work necessary to submit revisions and
5 supplements to LNP design information for the LNP COLA. All of this work in
6 2013 was necessary to advance NRC review of the LNP COLA and ultimate
7 issuance of the LNP COL. This work will continue in 2014, but DEF will not
8 recover the costs incurred after 2013 for this work from customers in the NCRC
9 docket, and therefore DEF has already taken steps to ensure that future COL costs
10 are not included in the NCRC docket after 2013.

11
12 **Q. What is the status of NRC review of the LNP COLA?**

13 A. The LNP COLA environmental review was completed in April 2012 when the
14 final Environmental Impact Statement (“FEIS”) was issued for the LNP. With
15 respect to the LNP Safety Review, the ACRS review of the advanced Final Safety
16 Evaluation Report (“SER”) was completed in January 2012 and, as I explained
17 above, the review of the CEUS evaluation was completed in January 2013.
18 Another ACRS review is expected in late 2014 to address emergent design issue
19 updates to the Levy COLA. Based on WEC’s delay in providing information
20 requested on the condensate return to the NRC, DEF now estimates that the Final
21 SER for the LNP is not expected until February 2015.

22 One part of the two-part formal hearing process for the LNP COLA was
23 completed in March 2013 when the NRC Atomic Safety Licensing Board
24 (“ASLB”) issued its ruling on the remaining contested contention to the LNP

1 COLA regarding the environmental impacts of dewatering and salt drift as a result
2 of the LNP. Following an evidentiary hearing in October and November 2012,
3 and the submission of Findings of Fact and Conclusions of Law in December
4 2012, the NRC ASLB unanimously resolved all issues in DEF's favor in March
5 2013. The ASLB concluded that the LNP FEIS complied with all legal and
6 regulatory requirements.

7 The second part of the two-part formal hearing process is the LNP COLA
8 mandatory hearing before the NRC Commissioners. The LNP COLA mandatory
9 hearing process cannot commence until the LNP FSER is issued, which is not
10 expected before February 2015, and the mandatory hearing for the LNP COLA
11 has not been scheduled by the NRC.

12 The NRC will not issue the LNP COL, however, until the NRC has
13 resolved the issues with respect to the NRC Waste Confidence Decision and Rule.
14 The LNP COLA, similar to other pending license applications for new nuclear
15 power plants, relied on the NRC Waste Confidence Decision and Rule.

16 The NRC Waste Confidence Decision and Rule represent the NRC's
17 generic determination that spent nuclear fuel can be stored safely and without
18 significant environmental impacts for a period of time past the end of the licensed
19 life of a nuclear power plant. The NRC relied on this generic Decision and Rule
20 to satisfy the NRC's obligations under the National Environmental Policy Act
21 ("NEPA") to evaluate the potential environmental impacts for the storage of spent
22 nuclear fuel on site after the nuclear power plant license terminates.

23 In June 2012, the United States Court for the District of Columbia Court
24 of Appeals invalidated the NRC's Waste Confidence Decision and Rule. In

1 August 2012, the NRC decided that the NRC will not issue any COL for a new
2 nuclear power plant until the NRC addressed the Court's concerns regarding the
3 evaluation of potential environmental impacts due to long-term storage of spent
4 nuclear fuel on power plant sites. Later, in September 2012, the NRC directed the
5 NRC Staff to develop a generic environmental impact statement ("EIS") to
6 support a new Waste Confidence Decision and Rule in two years or no later than
7 September 2014. The 2013 federal shutdown delayed the decision date by one
8 month to October 2014.

9
10 **Q. What is the status of the NRC process to develop a new Waste Confidence**
11 **Decision and Rule?**

12 A. The NRC conducted an EIS scoping period and published a scoping summary
13 report for the proposed Waste Confidence Rule in March 2013 and published a
14 draft generic EIS and proposed Rule in September 2013. The NRC is continuing
15 its public comment period for the draft generic EIS and proposed Waste
16 Confidence Rule through late December 2013. The NRC expects to publish a
17 final generic EIS and final Waste Confidence Rule in October 2014. Based on
18 this schedule, issuance of the Levy COL is not expected before 2015.

19
20
21 **Q. What permitting work was performed for the Levy COLA in 2013?**

22 A. DEF continued its work with the United States Army Corps of Engineers
23 ("USACE") for the Section 404 permit for the Levy site. The USACE Section
24 404 permit allows for and regulates the construction of structures in wetlands and

1 regulated waterways. This work included discussions and the development of
2 information for USACE regarding mitigation on government lands, the
3 assessment of secondary wetlands impacts, and revisions to the Environmental
4 Monitoring Plan (“EMP”). Further engineering and permitting work was
5 performed to revise Section 404 permit drawings for the USACE and to address
6 issues regarding the EMP, specifically with respect to the timing of potential
7 alternative water supply from desalination, to determine the use of ground water
8 for the LNP. DEF expects to resolve these remaining Section 404 permit issues
9 this year to allow for USACE issuance of the Section 404 permit for the LNP.
10 Likewise, while this work will continue in 2014, costs included in 2014 and
11 beyond will not be included in the NCRC.

12
13 **Q. For the Engineering, Design and Procurement costs, please identify what**
14 **those costs are and why the Company had to incur them.**

15 A. As reflected on Line 1b of the 2013 Detail Schedule, the Company incurred
16 Engineering, Design, and Procurement costs of [REDACTED] in 2013. The break-
17 down of these costs includes: (1) approximately [REDACTED] in contractual
18 payments to the Consortium for project management, quality assurance, purchase
19 order disposition support, and other home office services such as accounting and
20 project controls; and (2) approximately [REDACTED] for direct DEF oversight of
21 engineering activities of the Consortium including project management, project
22 scheduling, legal support, and cost estimating.

23

1 **Q. What Engineering, Design, and Procurement work was performed for the**
2 **LNP in 2013?**

3 A. The Levy team conducted Hold Point surveillance for Certified Mill Test Report
4 (“CMTR”) Data Package information for the Levy steam generator tubing at
5 various pre-determined stages during the tubing manufacturing process. A Hold
6 Point is a mandatory verification point beyond which work cannot proceed
7 without authorization by the Duke Energy contract administrator under the terms
8 of the EPC Agreement.

9 The Levy team also conducted Witness Point surveillance for eddy current
10 testing and the packing of the Levy steam generator tubing during the
11 manufacturing process. A Witness Point is an identified point in the
12 manufacturing process where the contract administrator may review or inspect
13 any component, or process of the work, while the work proceeds.

14 The Levy team reviewed and evaluated the Quality Plans for these steam
15 generator tubing Witness Points and Hold Points. The Quality Plans were
16 prepared by WEC and WEC provided on-going project management, quality
17 assurance, and other services for the Levy steam generator tubing.

18 The Levy steam generator tubing is one of the fourteen LNP Long Lead
19 Equipment (“LLE”) items. In 2010, the Company decided to continue to
20 manufacture the steam generator tubing when the Company evaluated the costs
21 and benefits of continuing or suspending LLE manufacturing following the NRC
22 decision not to issue the Limited Work Authorization for the Levy project. The
23 chart summarizing the Company’s LLE disposition decisions previously provided

1 to the Commission is included as Exhibit No. ____ (CMF-2) to my direct
2 testimony.

3 As a result of this prior decision, the manufacture of the Levy steam
4 generator tubing was completed and placed in storage in 2013 prior to DEF's
5 decision not to complete construction of the LNP. The Levy team reviewed and
6 evaluated the steam generator tubing and packing procedure and provided input to
7 WEC prior to the storage of the steam generator tubing.

8 The Levy team also addressed LLE fabrication issues and follow-up
9 actions with WEC regarding the LLE. The Levy engineering team completed its
10 review of the LLE design documents in 2013. It also included engineering and
11 project management support for meetings with WEC regarding the LNP LLE that
12 was in the manufacturing process prior to the decision not to complete
13 construction of the LNP. The 2013 costs include WEC's costs for WEC's project
14 management and engineering services with respect to the LNP LLE under the
15 EPC Agreement.

16
17 **Q. Was all this Engineering, Design, and Procurement work necessary in 2013?**

18 A. Yes. Prior to the 2013 Settlement Agreement, DEF was proceeding with the
19 engineering, design, and procurement work consistent with the LLE disposition
20 decisions summarized in Exhibit No. ____ (CMF-2) and the LNP project schedule
21 for completion of construction of the Levy units in 2024 and 2025. WEC was
22 supporting this work with its project management, quality assurance, purchase
23 order disposition support, and other home office services, such as accounting and
24 project controls, consistent with the EPC Agreement.

1 DEF continued this LLE project management work when DEF executed
2 the 2013 Settlement Agreement and decided not to complete construction of the
3 LNP. At that time, the fourteen LNP LLE items were at various stages of
4 development. For some LLE, like the steam generator tubing discussed above,
5 the manufacturing process was well under way and in fact completed prior to
6 execution of the 2013 Settlement Agreement. Other LLE was at various stages in
7 the manufacturing process at that time, and still other LLE had previously been
8 suspended and the partially completed LLE was in storage. DEF had to determine
9 what to do with the completed and partially completed LLE items after DEF
10 decided not to complete construction of the LNP.

11 To make the final LLE disposition decision that was in the best interests of
12 DEF's customers DEF needed information from WEC and WEC's LLE vendors.
13 DEF needed to know how DEF might avoid or reduce LLE costs based on
14 potential disposition options and DEF needed market and salvage value
15 information. DEF needed WEC's continued engineering and project management
16 support to preserve the LLE, obtain this information from WEC and WEC's
17 vendors, and make a final disposition decision.

18 DEF did take steps to ensure that only the engineering, design and
19 procurement work that was necessary to disposition the LLE and wind down the
20 project was performed after DEF's decision not to complete the LNP with the
21 execution of the 2013 Settlement Agreement. These efforts resulted in DEF
22 incurring less engineering, design and procurement expenditures than DEF
23 estimated it would incur in 2013.

24

1 **Q. How did Generation preconstruction actual capital expenditures for January**
2 **2013 through December 2013 compare to DEF's estimated/actual costs for**
3 **2013?**

4 A. LNP preconstruction generation costs were [REDACTED], or [REDACTED] less
5 than DEF's actual/estimated costs for 2013. The reasons for the major (more than
6 \$1.0 million) variances are provided below.

7 **License Application:** License Application capital expenditures were [REDACTED]
8 [REDACTED] which was about [REDACTED] less than the actual/estimated
9 License Application costs for 2013. This variance is attributable to
10 deferral of environmental permitting work and remaining project
11 contingency funds.

12
13 **Engineering, Design, and Procurement:** Engineering, Design, and
14 Procurement capital expenditures were [REDACTED], which was about [REDACTED]
15 [REDACTED] less than the actual/estimated Engineering, Design, and
16 Procurement costs for 2013. This variance is driven primarily by (1)
17 lower than estimated internal labor and expenses and WEC expenses
18 related to the reduced scope of engineering activities for the LNP COLA
19 and environmental permits, including the USACE Section 404 permit and
20 deferral of conditions of certification scope; and (2) lower than estimated
21 internal labor and expenses and WEC expenses as a result of the
22 Company's decision not to complete construction of the LNP with the
23 execution of the 2013 Settlement Agreement at the end of July 2013.

24

1 **ii. Construction Generation Costs Incurred.**

2 **Q. Did the Company incur Generation construction costs for the LNP in 2013?**

3 A. Yes. As reflected on the 2013 Detail Schedule, the Company incurred generation
4 construction costs in the categories of Real Estate Acquisition, Power Block
5 Engineering and Procurement, and Disposition of LLE.

6
7 **Q. For the Real Estate Acquisition costs, please identify what those costs are and
8 why the Company had to incur them.**

9 A. As reflected on Line 16a of the 2013 Detail Schedule, the Company incurred Real
10 Estate Acquisition costs of approximately [REDACTED] in 2013. The majority of
11 these costs were related to an extension payment for the required barge slip
12 easement for the LNP based on the delay in COL receipt. Additional costs were
13 incurred for environmental and survey work for the Dunnellon to Chiefland trail.

14
15 **Q. For the Power Block Engineering and Procurement costs, please identify
16 what those costs are and why the Company had to incur them.**

17 A. As reflected on Line 16c of the 2013 Detail Schedule, the Company incurred
18 Power Block Engineering and Procurement costs of [REDACTED] in 2013. These
19 costs included contractually committed construction milestone payments for
20 partially completed or completed LLE for the Steam Generator Tubing, Reactor
21 Coolant Loop Piping, Pressurizers, Passive Residual Heat Removal (“PRHR”)
22 Heat Exchangers, Accumulator Tanks, and Core Make-Up Tanks. These costs
23 also included contractually committed incremental LLE costs, including storage
24 and shipping, insurance, and warranty costs for the Steam Generator Tubing,

1 Steam Generator Balance, Reactor Vessel, Squib Valves, and Variable Frequency
2 Drives.

3

4 **Q. Was DEF contractually obligated to make the LLE construction milestone**
5 **payments prior to DEF's decision not to complete the LNP?**

6 A. Yes. DEF was contractually obligated to make these LLE payments under the
7 EPC Agreement when it was amended to address disposition of the LNP LLE
8 after the partial suspension of the EPC Agreement. These amendments are
9 reflected in change orders to the EPC Agreement.

10

11 **Q. What final LLE disposition costs were incurred in 2013?**

12 A. As reflected on Line 16d of the 2013 Detail Schedule the Company incurred LLE
13 Disposition costs of [REDACTED] in 2013. DEF accepted a final settlement offer
14 to terminate the LLE purchase orders with Mangiarotti and settle all costs with
15 respect to the Accumulator Tanks, Core Make-Up Tanks, Pressurizers, and PRHR
16 Heat Exchangers LLE for the LNP. Fabrication of these LLE items was
17 underway at Mangiarotti's facility in 2013. After Commission approval of the
18 2013 Settlement Agreement, DEF authorized WEC to contact Mangiarotti to
19 determine the feasibility and cost impact of placing a manufacture hold on these
20 LLE items while DEF analyzed the costs and benefits of various LNP LLE
21 disposition options. When Mangiarotti replied that there was a cost to place a
22 manufacturing hold on the LLE, DEF inquired further through WEC about the
23 cost to DEF to terminate the LNP LLE purchase orders and cancel manufacturing
24 of the LLE.

1 Mangiarotti responded with a final offer to settle the disposition of the
2 LNP LLE purchase orders. This offer included all costs, including cancellation
3 charges to third parties, demobilization costs, and costs to scrap or salvage the
4 LLE materials, and it included all credits, including salvage or scrap value. DEF
5 evaluated this offer against the costs and benefits of other available LLE
6 disposition options. DEF determined that it should accept the offer because it
7 resulted in net savings for DEF's customers. Exhibit No. ____ (CMF-3) to my
8 direct testimony is the DEF memo evaluating the Mangiarotti settlement offer.
9 This memo explains DEF's evaluation and the net savings to DEF's customers if
10 DEF accepted the settlement offer. Exhibit No. ____ (CMF-4) to my direct
11 testimony is DEF's letter to WEC confirming that DEF accepted the Mangiarotti
12 LNP LLE disposition settlement offer.

13
14 **Q. How did DEF evaluate the final LNP LLE disposition settlement offer with**
15 **Mangiarotti?**

16 A. DEF evaluated the Mangiarotti LNP LLE disposition settlement offer pursuant to
17 DEF's LLE Disposition Plan. A copy of this Plan is included as Exhibit No. ____
18 (CMF-5) to my direct testimony. The date of the Plan memorandum in Exhibit
19 No. ____ (CMF-5) is in January 2014, but the substance of this Plan was approved
20 and the Plan was implemented after the Commission approved the 2013
21 Settlement Agreement in October 2013.

22 DEF's LLE disposition objectives were consistent with the 2013
23 Settlement Agreement. DEF's objectives were to disposition the LNP LLE in a
24 manner that (i) minimized the financial cost and risks of the LLE disposition to

1 DEF's customers; (ii) minimized other costs to DEF and its customers; and (iii)
2 evaluated the potential future use of the LNP LLE for other AP1000 nuclear
3 power plant projects. Minimizing LLE disposition costs and risks included
4 minimizing LLE evaluation costs and purchase order or contract termination
5 costs, minimizing the risks of financial loss associated with the LNP LLE, and
6 maximizing the LNP LLE disposition cash value.

7 To achieve these objectives, DEF considered six LLE disposition options.
8 Four of these disposition options flowed from the decision to dispose of the LLE
9 rather than to store the LLE. These included: (1) reusing the LNP LLE at an
10 existing or planned Duke Energy nuclear power plant other than the LNP; (2)
11 salvaging the LNP LLE for scrap value by recycling the LLE base materials; (3)
12 selling the LNP LLE to other AP1000 nuclear power plant project owners; or (4)
13 selling the LNP LLE to the WEC vendors for vendor purposes. The option to
14 store the LNP LLE was two-fold, either (1) consignment of the LNP LLE to
15 WEC, in an arrangement that shared costs and risks between DEF and WEC, until
16 WEC could sell or re-use the LLE; or (2) storage of the LNP LLE for DEF's
17 future use.

18 As explained in Exhibit No. ____ (CMF-5), DEF storage of the LNP LLE
19 for future DEF use was not a viable option. DEF determined at the time of the
20 2013 Settlement Agreement that the external risks to the LNP fundamentally
21 changed with the 2013 amendments to the nuclear cost recovery statute, resulting
22 in substantial uncertainty and unacceptable risk to DEF and its customers to
23 proceed with construction of the LNP. The same uncertainty and unacceptable
24 risk exists with the DEF storage option for potential DEF future use. DEF cannot

1 determine under the statutory amendments when the sequential regulatory
2 approvals required by those amendments would be obtained in the future and
3 when the project would be constructed. As a result, DEF cannot determine with
4 any accuracy the storage period necessary for potential future construction of
5 AP1000 nuclear power plants at the Levy site. For these reasons, as more fully
6 explained in Exhibit No. ____ (CMF-5), storage of the LNP LLE by DEF for
7 potential future construction at the Levy site was not a viable LLE disposition
8 option and it was not considered further by DEF.

9 All other potential LNP LLE disposition options were evaluated for the
10 Mangiarotti LNP LLE based on the Company's LLE disposition objectives. This
11 evaluation is explained in detail in the confidential memo included as Exhibit No.
12 ____ (CMF-3) to my direct testimony. Based on this evaluation, DEF decided to
13 accept Mangiarotti's offer that resulted in termination of the LNP LLE purchase
14 orders and LLE disposition by salvaging the LLE for scrap value of the LLE base
15 materials. This LLE disposition option resulted in a net savings to DEF's
16 customers compared to the other viable LLE disposition options.

17
18 **Q. Does DEF intend to use this LLE disposition plan to evaluate the disposition**
19 **of the other LNP LLE?**

20 A. Yes. DEF started the process of collecting information necessary to evaluate the
21 LNP LLE disposition from WEC at about the same time the 2013 Settlement
22 Agreement was executed. DEF is still collecting the information necessary to
23 conduct that evaluation from WEC and its vendors consistent with the schedule
24 included in the LLE Disposition Plan included as Exhibit No. ____ (CMF-3) to my

1 direct testimony. This process with WEC is explained in the confidential
2 memorandum included as Exhibit No ____ (CMF-6) to my direct testimony.

3 DEF does not have direct contracts with the LLE vendors. DEF's
4 contractual relationship is with WEC and WEC has contracts or purchase orders
5 with the LNP LLE vendors. DEF must deal with the LNP LLE vendors through
6 WEC who has the contractual relationship with them. DEF also does not have
7 possession of the completed LLE or the incomplete LLE and LLE material. The
8 WEC vendors maintain storage and insurance for the LLE and LLE material and
9 WEC provides the quality assurance to maintain the quality of the LLE and LLE
10 material pursuant to WEC's contracts or purchase orders with the WEC vendors.
11 WEC's vendors, as the manufacturers of the LLE, are also in the best position to
12 determine the market and salvage value of the LLE and LLE material. DEF needs
13 WEC's assistance to maintain the quality of the LLE and LLE material and to
14 obtain the necessary market and salvage information from WEC's vendors to
15 make prudent final LLE disposition decisions. DEF must therefore work with
16 WEC and is proceeding to do so as I have described in Exhibit No. ____ (CMF-
17 6).

18
19 **Q. Has DEF terminated the EPC Agreement with the Consortium?**

20 A. DEF did not terminate the EPC Agreement in 2013. As expressed in the 2013
21 Settlement Agreement approved by the Commission, DEF agreed to terminate the
22 EPC Agreement at the earliest reasonable and prudent time. DEF determined in
23 January 2014 that it was prudent to terminate the EPC Agreement and DEF has
24 now terminated the EPC Agreement. DEF, however, still needs WEC's

1 assistance with the remaining LLE disposition and will continue to incur some
2 costs with WEC for that work in 2014.

3

4 **Q. How did actual Generation construction capital expenditures for January**
5 **2013 through December 2013 compare to DEF's actual/estimated costs for**
6 **2013?**

7 A. LNP construction Generation costs were [REDACTED] or about [REDACTED] greater
8 than DEF's estimated projected costs for 2013. The reasons for the variances are
9 provided below.

10 **Power Block Engineering and Procurement:** Power Block Engineering
11 and Procurement capital expenditures were [REDACTED], which was [REDACTED]
12 [REDACTED] less than the actual/estimated Power Block Engineering and
13 Procurement costs for 2013. This variance is attributable to the deferral of
14 LLE milestones as well as the cancellation of manufacturing on certain
15 LLE components.

16

17 **Real Estate Acquisitions:** Expenditures for LNP real estate acquisitions
18 were [REDACTED], which was about [REDACTED] more than the actual/estimated
19 real estate acquisition costs for 2013. The reason for this variance is a
20 payment for extension of the barge slip easement due to the delay in
21 receipt of the LNP COL.

22 **B. TRANSMISSION.**

23 **Q. Please describe what transmission work and activities were performed in**
24 **2013 for the LNP.**

1 A. The transmission work in 2013 related to Real Estate Acquisitions and Mitigation
2 was for strategic land acquisitions for the Levy Common Transmission Corridor
3 and wetland mitigation. There were also Levy transmission labor and related
4 expenses to perform general project management associated with these
5 acquisition activities prior to DEF's decision not to complete construction of the
6 LNP.

7
8 **i. Preconstruction Transmission Costs Incurred.**

9 **Q. Did the Company incur Transmission-related preconstruction costs for the**
10 **LNP in 2013?**

11 A. No. As reflected on Line 3 of the 2013 Detail Schedule, the Company did not
12 incur Transmission-related preconstruction costs in 2013. DEF also estimated
13 that it would not incur any preconstruction transmission capital costs in 2013.

14
15 **ii. Construction Transmission Costs Incurred.**

16 **Q. Did the Company incur any transmission-related construction costs for the**
17 **LNP in 2013?**

18 A. Yes, as reflected on the 2013 Detail Schedule, the Company incurred
19 Transmission-related construction costs in the categories of Real Estate
20 Acquisition and Mitigation and Other.

21
22 **Q. For the Real Estate Acquisition and Mitigation costs, please identify what**
23 **those costs are and why the Company had to incur them.**

1 A. As reflected on Line 18b of the 2013 Detail Schedule, the Company incurred Real
2 Estate Acquisition and Mitigation costs of approximately [REDACTED]. These
3 costs were incurred for the strategic land acquisitions in the Levy Common
4 Transmission Corridor prior to DEF's decision not to complete construction of the
5 LNP and for contractually committed to wetland mitigation payments.

6
7 **IV. OPERATION & MAINTENANCE COSTS INCURRED IN 2013 FOR THE**
8 **LNP.**

9 **Q. What Operation & Maintenance ("O&M") costs did the Company incur for**
10 **the LNP in 2013?**

11 A. As reflected on the 2013 Detail Schedule, page 2, the Company incurred O&M
12 expenditures in the amount of about \$477,000 for internal labor and outside legal
13 services that were necessary for the LNP in 2013. There were no major (more
14 than \$1.0 million) variances between the actual/estimated O&M costs and the
15 actual O&M costs incurred.

16
17 **Q. To summarize, were all of the costs that the Company incurred in 2013 for**
18 **the LNP reasonable and prudent?**

19 A. Yes, the specific cost amounts for the LNP contained in the NFR schedules,
20 which are attached as exhibits to Mr. Foster's testimony, reflect the reasonable
21 and prudent costs DEF incurred for LNP work in 2013. All of these activities and
22 associated costs were necessary for the LNP.

23
24

1 **V. PROJECT MANAGEMENT, CONTRACTING, AND COST OVERSIGHT.**

2 **Q. Can you explain the Company's 2013 LNP project management, contracting,**
3 **and cost control oversight policies and procedures?**

4 A. Yes. As I explained in my 2013 March testimony -- see Exhibit No. ____ (CMF-
5 1) to my current direct testimony -- subsequent to completion of the merger
6 between Duke Energy and Progress Energy, the combined company formally
7 integrated the policies and procedures of the two companies. The on-going
8 integration of the two companies brought about a comprehensive review of all
9 processes and procedures to determine that best practices from both companies
10 are retained.

11 As I also explained previously, this integration is a gradual, on-going
12 process to ensure continual, effective project management while the policies and
13 procedures are merged and reconciled into best practices for the new, combined
14 company. Substantial progress has been made, but the merger and reconciliation
15 process continues at this time. Maintaining best practices within the Company,
16 however, is always an on-going process even beyond the merger and
17 reconciliation of the policies and procedures of the two companies. DEF will
18 continue to update its policies and procedures applicable to the management of its
19 nuclear projects as best practices evolve over time with industry developments
20 and Duke Energy and industry experience.

21 Nuclear Development ("ND") is responsible for the LNP management.
22 As a result, ND is responsible for the process of implementing best practices and
23 lessons learned for the two companies for the LNP and other nuclear development
24 projects. The process of merging and reconciling policies and procedures means

1 that some Progress Energy policies and procedures have been adopted or revised
2 and merged into revised Duke Energy policies and procedures and some have
3 been deleted because they were duplicative of or substantially similar to existing
4 Duke Energy policies. Exhibit No. ____ (CMF-7) to my direct testimony contains
5 a table listing the results of the process of merging and reconciling the Progress
6 Energy policies and procedures with the Duke Energy policies and procedures.
7 This Exhibit also contains tables describing the new Nuclear Development and
8 fleet wide policies and procedures applicable to the LNP. These project
9 management policies and procedures reflect the collective experience and
10 knowledge of the combined company, Duke Energy.

11
12 **Q. Are the Company's 2013 LNP project management, contracting, and cost**
13 **control oversight policies and procedures substantially the same as the**
14 **Company's prior project management, contracting, and cost control**
15 **oversight policies and procedures?**

16 A. Yes. The integration process revealed that the two companies' nuclear
17 development processes and procedures were similar. Consequently, the 2013
18 LNP project management, contracting, and cost oversight control policies and
19 procedures changed more in structure than substance. The Company's 2013 LNP
20 project management, contracting, and cost control oversight policies and
21 procedures reflect the best practices and lessons learned of the two companies in
22 policies and procedures that efficiently and effectively provide for prudent LNP
23 management and prudent oversight of the LNP costs.

24

1 **Q. Are the Company's 2013 LNP project management, contracting, and cost**
2 **control oversight policies and procedures reasonable and prudent?**

3 A. Yes, they are. As I explain above, although Duke Energy merged and reconciled
4 the policies and procedures of the two companies, the LNP 2013 project
5 management, contracting, and cost control policies and procedures are
6 substantially the same as the collective policies and procedures that have been
7 vetted in the annual project management audit in this docket and previously
8 approved as prudent by the Commission. *See* Order No. PSC-09-0783-FOF-EI,
9 issued Nov. 19, 2009; Order No. PSC-11-0095-FOF-EI, issued Feb. 2, 2011;
10 Order No. PSC-11-0547-FOF-EI, issued Nov. 23, 2011; and Order No. PSC-12-
11 0650-FOF-EI, issued Dec. 11, 2012. We believe, therefore, that the LNP project
12 management policies and procedures are consistent with best practices for capital
13 project management in the industry and continue to be reasonable and prudent.

14
15 **Q. Have the Company's project management, contracting, and cost control**
16 **oversight policies and procedures changed as a result of the Company's**
17 **decision not to complete construction of the LNP?**

18 A. No, the Company's ND project management, contracting, and cost control
19 oversight policies and procedures have not changed. These are Duke Energy-
20 wide policies and procedures, applicable to all nuclear generation development,
21 and in some cases such as the fleet-wide policies and procedures, existing
22 operating nuclear power plants. Duke Energy did not change its ND project
23 management, contracting and cost control oversight policies and procedures
24 because of the Company's decision not to complete construction of the LNP.

1 Some of these policies and procedures are no longer applicable to the LNP going
2 forward as a result of this decision. Some new processes like the LLE Disposition
3 Plan included as Exhibit No. ____ (CMF-5) to my testimony were developed and
4 implemented as a result of this decision. But the Company is still managing the
5 LNP to LNP COL receipt and the LLE disposition and wind down of the LNP,
6 and as a result, the Company is still following all applicable project management,
7 contracting, and cost control oversight policies and procedures for the LNP.

8 For example, the Duke Energy Nuclear Oversight Organization (“NOS”)
9 completed several Nuclear Quality Assurance reviews for the LNP after the
10 Company’s decision not to complete construction of the LNP consistent with
11 ND’s policies and procedures with respect to quality assurance. NOS participated
12 in Nuclear Procurement Issues Committee (“NUPIC”) audits of (1) WEC
13 regarding the NPP (AP1000) on July 29 to August 2, 2013; (2) Sargent and
14 Lundy, LLC on October 21 to October 25, 2013; and (3) Worley Parsons on
15 November 18 to November 22, 2013. Sargent and Lundy and Worley Parsons are
16 part of the joint venture team who contracted with the Company for engineering
17 and licensing support for the Levy COLA. Another member of the joint venture
18 team, CH2M Hill, was audited by Duke Energy from October 14 to October 16,
19 2013. Additionally, NOS conducted its annual assessment of ND activities on
20 September 23 to September 30, 2013. As these examples demonstrate, DEF is
21 continuing to actively manage the LNP in a prudent manner consistent with its
22 applicable project management, contracting, and cost control oversight policies
23 and procedures.

24

1 **Q. What process have you implemented in 2013 to ensure that future costs**
2 **related to the LNP COL are not included in the NCRC as of January 1,**
3 **2014?**

4 A. From a project team perspective, DEF has always segregated project costs
5 incurred by specific project code. Accordingly, this will not change and for 2014
6 the team continues to charge COL-related labor, NRC fees, vendor invoices and
7 all other COL-related cost items to the applicable COL project codes. Thereafter,
8 as discussed in the testimony of Mr. Foster, the Regulatory Accounting and
9 Regulatory Strategy groups will ensure that the COL-related project codes and
10 associated costs incurred in 2014 and beyond are not included in the Company's
11 NCRC Schedules, and thus not presented for nuclear cost recovery. These COL-
12 related costs will however continue to be tracked as I discussed for accounting
13 purposes consistent with the 2013 Settlement Agreement.

14
15 **Q. Does this conclude your testimony?**

16 A. Yes, it does.

1 BY MR. ANDERSON:

2 Q And, Mr. Fallon, do you have a summary of
3 your prefiled testimony?

4 A Yes, I do.

5 Q Will you please provide that to the
6 Commission?

7 A Yes, I will. My March 3rd, 2014 direct
8 testimony supports the prudence of the company's 2012
9 and 2013 actual costs incurred for the Levy Nuclear
10 project, including project exit costs. These costs
11 were prudently incurred and the company is therefore
12 entitled to recover them. My testimony also supports
13 the reasonableness and prudence of the company's 2012
14 and 2013 project management contracting and cost
15 oversight controls.

16 My May 1, 2014 direct testimony and exhibits
17 present the company's 2014 actual estimated and 2015
18 projected exit and wind-down costs for the Levy project
19 consistent with the 2013 settlement agreement.

20 I'm available to answer any questions you may
21 have regarding my testimony. Thank you.

22 MR. ANDERSON: We tender Mr. Fallon for
23 cross.

24 CHAIRMAN BRISE: All right. Thank you.
25 Mr. Rehwinkel?

1 MR. REHWINKEL: Mr. Chairman, before we get
2 underway, for logistic purposes, I estimate, based
3 on Mr. Foster's testimony and the length of the
4 questions that I have, I could be an hour and a
5 half to two-hour range. I have six exhibits,
6 three of which are confidential and will require a
7 little bit of extra care and time to distribute.
8 They're numbered, and I think we're good to go on
9 that. But I just wanted to give you that
10 information before we get fully underway here.

11 CHAIRMAN BRISE: Okay. So let's poll the
12 other intervenors to see how much time they might
13 have as well.

14 Mr. Brew.

15 MR. BREW: Mr. Chairman, I'll probably have
16 15 minutes.

17 CHAIRMAN BRISE: Mr. Moyle?

18 MR. MOYLE: I'll probably have between five
19 and 15, depending on the answers.

20 CHAIRMAN BRISE: Is that a Moyle estimate?

21 MR. MOYLE: It's a Moyle estimate. But if we
22 get done tonight, I'm sure I could make it
23 shorter.

24 CHAIRMAN BRISE: So Mr. Wright is not in
25 here. We have no idea how long he might have.

1 Our intent is to try to -- and here he is
2 coming right now. We're trying to get a sense
3 from you how long you might have for Mr. Fallon.

4 MR. WRIGHT: I have no questions for
5 Mr. Fallon. It's conceivable that something could
6 come up, but I don't anticipate it.

7 CHAIRMAN BRISE: Okay. So we're talking
8 about maybe two hours for Mr. Fallon. It's 4:10
9 right now, I think it's conceivable that we can
10 finish this evening if we will go to about 6:30.

11 MR. REHWINKEL: Thank you. I thought that's
12 what you might want to do and I just wanted to
13 give you a sense of that.

14 CHAIRMAN BRISE: Sure. Thank you for that.

15 CROSS EXAMINATION

16 BY MR. REHWINKEL:

17 Q **Good afternoon, good evening, Mr. Fallon.**

18 A Good evening.

19 Q **Since I was nice to Mr. Foster, I'm going to**
20 **have to be mean to you.**

21 A Okay.

22 Q **You are the VP of Nuclear Development for**
23 **Duke; is that right?**

24 A That is correct.

25 Q **And as such, you are the person most directly**

1 responsible for the Levy Nuclear project such as it is,
2 correct?

3 A Yes.

4 Q And is it also true that this responsibility
5 includes the ongoing effort to secure the combined
6 construction and operating license, or COL, related to
7 what used to be the LNP project; is that right?

8 A Yes, that is correct.

9 Q And as such, you were also responsible for
10 the management of engineering procurement and
11 construction, or EPC, contract for what used to be the
12 LNP project?

13 A Yes, that is correct.

14 Q Part of your testimony in this year's hearing
15 cycle is to report to the Commission on the status of
16 Duke's obligation to sell or otherwise dispose of the
17 components of LNP, known as long lead materials or long
18 lead equipment, or referred to LLM or LLE, right?

19 A Yes.

20 Q Okay. And just like with Mr. Foster, you
21 would agree with me, for purposes of these questions,
22 LLE and LLM can be used interchangeably, right?

23 A Yes.

24 Q Okay. Would you also agree with me that when
25 I say "Duke," that it applies to Duke or Progress

1 **Energy Florida based on the time frame that the answer**
2 **would relate to? Do you understand that?**

3 A Yes, I do.

4 Q **Okay. Can I get you to turn to your Exhibit**
5 **CMF-2.**

6 MR. REHWINKEL: Do the Commissioners have
7 all -- Commissioners, if you don't have CMF-2 in
8 an unredacted form, I can get it off of another
9 schedule.

10 CHAIRMAN BRISE: We have a document, but we
11 don't know if it's CMF-2.

12 MR. REHWINKEL: Let's do this, let's go to
13 CMF-5, the redacted version. I think you should
14 have that. Is that right?

15 CHAIRMAN BRISE: Yes.

16 MR. REHWINKEL: Let's use that.

17 CHAIRMAN BRISE: What we have right now is
18 CMF-10.

19 MR. REHWINKEL: Okay.

20 BY MR. REHWINKEL:

21 Q **CMF-5 in the redacted version, do you have**
22 **that? And on Page 2 of 6 is what I want to talk to you**
23 **about. Do you have that?**

24 A Yes, I do.

25 MR. REHWINKEL: Do the Commissioners have

1 CMF-5, Page 2? It's the redacted.

2 CHAIRMAN BRISE: The redacted, yeah, we have
3 it. Thank you.

4 MR. REHWINKEL: All right.

5 BY MR. REHWINKEL:

6 Q Would you agree with me that there are 15
7 items in this table on this page here?

8 A I'm only counting 14.

9 Q Okay. At some point, the squib valves may be
10 considered in two different pieces, right?

11 A That is correct, yes.

12 Q All right. So at some point in time, these
13 components were -- well, it says LLE. These are the
14 list of the LLE components; is that right?

15 A Yes.

16 Q Okay. What I would like to do is ask you on
17 CMF-5, Page 2 in Table 1, which is what this is, right,
18 Table 1?

19 A Yes.

20 Q If you could list for me the LLE that
21 comprises tangible components that belong to Duke.

22 A Okay. Yes, there is steam generating tubing
23 which has been completed and is in storage. There are
24 variable frequency drives which have been completed and
25 are in storage.

1 Q And that's VFDs?

2 A VFDs yes.

3 And then the reactor vessel, steam generator
4 valves, squid valves and reactor coolant pumps were
5 suspended. However, there are materials associated
6 with that, with those pieces of LLE.

7 Q Okay. So I counted -- when you listed that,
8 the top six items are tangible LLE; is that right?

9 A That's correct, yes.

10 Q And whether you actually possess them in
11 Florida, these belong to Duke in their current state;
12 is that right, these LLE?

13 A Yes, we believe they belong to Duke.

14 Q Okay. Now, is it fair to say that these six
15 components comprise the LLE or LLM sale or salvage
16 opportunities for Duke?

17 A Yes.

18 Q And you would also agree with me that under
19 the 2013 settlement, Duke has an obligation to make its
20 best efforts to obtain the maximum value it can for its
21 customers by selling or otherwise disposing of these
22 components, correct?

23 A Where is that in the settlement agreement?

24 I believe the exact language, or at least the
25 language I'm seeing here, "Shall use its reasonable and

1 prudent efforts to curtail avoidable future LNP costs
2 to sale or otherwise salvage LNP assets or otherwise
3 refund costs that can be recaptured for the benefit of
4 customers."

5 Q Okay. I'll accept that. That's not much
6 different from what your best efforts are, is it?

7 A No. I was just making sure we were accurate.

8 Q Okay. That's fair.

9 Now, can you tell me, without voicing any
10 confidential information, but in the aggregate, what
11 Duke's customers have paid, not carrying costs or
12 insurance and storage costs, but just what they have
13 paid in the form of milestone or other disposition
14 payments for these six components?

15 A That number is approximately \$190 million.

16 Q Now, does it include disposition payments or
17 are these just the milestone payments called for under
18 the EPC?

19 A They include whatever agreements were made,
20 any change orders that were agreed to as part of the
21 2009 suspension. So I don't understand if you are
22 including those as disposition costs, I want to make
23 sure that I'm accurate.

24 Q Okay. Well, let me do this. I do need to
25 ask a question from a confidential document, and this

1 will be in CMF-6, which I believe you should have. And
2 what I would like to do is direct your attention to
3 Page 101 of CMF-6. And I hope we didn't excuse
4 Mr. Foster too soon, but I think we can handle this
5 here.

6 CHAIRMAN BRISE: Give us one second, I don't
7 think we have -- yeah, CMF-6.

8 BY MR. REHWINKEL:

9 Q While they're getting that, do you have 101?

10 A Yes, I do.

11 CHAIRMAN BRISE: You said Page 101?

12 BY MR. REHWINKEL:

13 Q This list that I'm looking at, this slide
14 that I'm looking at on Page 101 is confidential, which
15 it's labeled that way, correct?

16 A Yes, that's correct.

17 Q So I would ask you to be ultra careful in
18 your answers to me. I don't want you to voice
19 confidential information.

20 The first six items on this page correspond
21 to the first six items on CMF-5, Page 2; is that right?

22 A Yes.

23 Q Okay. And there is a column, the middle
24 column, I don't think that's confidential, the three
25 letters starting with a P, can you read those and the

1 heading?

2 A Paid to date?

3 Q Yes.

4 A Yes.

5 Q So if I added these numbers under the paid to
6 date column, should that -- plus two columns over,
7 there is a number -- would the product of those seven
8 numbers generally be what customers have spent or will
9 have spent to date to acquire these LLEs, for Duke to
10 acquire these LLEs?

11 A And my original answer, the 190 million
12 represented in the paid to date column is some of those
13 six numbers, and it does not include that remaining
14 balance number.

15 Q Okay. So that remaining balance number --
16 were you here for Mr. Foster's testimony?

17 A Yes.

18 Q That remaining balance number that's not
19 included in your 190, that would be the October 2014
20 amount; is that right?

21 A Yes, that's correct.

22 Q So these seven numbers together would
23 represent what the customers will have invested in long
24 lead equipment by the end of 2014; is that right?

25 A Assuming that the -- the October payment is

1 assumed. We have not terminated that purchase order
2 yet so we're not obligated to make that payment yet.

3 Q Okay. But you asked for cost recovery for
4 it, which would -- which I guess from the Commission's
5 standpoint, they should assume that you're going to
6 make that payment?

7 A Right.

8 Q Now, do you know whether these costs include
9 more than milestone payments? Do they include some
10 dispositioning payments? For example, to suspend
11 fabrication or to take steps to disposition assets?

12 A Subject to check, I would have to go back and
13 look at the change orders for each one of these, but
14 what I assume these costs include are the monies that
15 were paid to date when the purchase orders were
16 suspended. And if there were any additional monies,
17 they would be included in that amount.

18 Q Okay. Fair enough.

19 In the next to the last column, can you read
20 me that heading?

21 A "Storage Costs/Insurance Costs."

22 Q Yes. Are you able to tell me what these
23 costs amount to in the aggregate for these six
24 components?

25 A Approximately \$3.3 million per year.

1 **Q Okay. Now, are these costs included in the**
2 **190 million that is in the paid to date column?**

3 A I do not exactly know when storage started
4 for some of this equipment. Like some of them have
5 just been completed in the 2013 time frame, so I don't
6 know how much of the storage is included in that paid
7 to date or how much in the future. I assume there's
8 some small component of storage and insurance that's
9 included in the paid to date.

10 **Q Okay. Did you hear me -- and by the way, I**
11 **think we should stick with the 190 and not total the**
12 **remaining balance and the 190.**

13 A Right.

14 **Q Just for purposes of everybody here.**

15 A Right.

16 **Q Were you here when I talked to Mr. Foster**
17 **about 2015 and all the zeros in the 2015 Line 1 area of**
18 **his TGF-4?**

19 A Yes.

20 **Q If there were to be storage and insurance**
21 **costs for 2015, would they be shown in Line 1 of that**
22 **schedule?**

23 A I believe when Mr. Foster was developing that
24 schedule, we had assumed that we would have completed
25 the disposition or the disposal of the LLE such that

1 storage and insurance would not be needed in 2015.

2 **Q Okay. Is that still a good assumption?**

3 A It is our intent and our plan to move to
4 complete disposition and disposal by the end of 2014.

5 **Q Okay. Do you have any additional information**
6 **to tell the Commission about what the status of sale**
7 **and disposition of assets are today versus the day you**
8 **filed your May 1st testimony?**

9 A In my May 1 testimony, we had targeted a bid
10 event by the end of May. And we actually initiated
11 that bid event in early June, and we received some
12 interest from the marketplace. And we are still
13 working through with Westinghouse on confidentiality
14 issues around proprietary data for the different pieces
15 of equipment so that we can move to the next stage of
16 the bid event.

17 **Q Would it be fair to say that you have not**
18 **consummated a sale of a major LLE as of today?**

19 A Of a major LLE, yes, that's correct.

20 **Q Okay. Now, the costs that I discussed with**
21 **you in the paid to date and the remaining balance and**
22 **the storage cost columns, none of those costs include**
23 **carrying costs; is that correct?**

24 A I do not believe so.

25 **Q You don't believe I'm correct or you don't**

1 **believe they do include?**

2 A I do not believe they include carrying costs.

3 Q Okay.

4 A These are the actual paid amounts to
5 Westinghouse.

6 Q Okay.

7 A Or to the consortium.

8 Q Just for clarification, when you make a
9 payment for LLE, it always goes to Westinghouse and
10 then they pay the sub-vendors or their vendors on
11 whatever basis or agreement they have with them; is
12 that right?

13 A Yes.

14 Q And if they make payments to the vendors, are
15 you aware of it?

16 A No, I'm not.

17 Q Okay. Let's go back to CMF-5, Page 2, if we
18 can. Now, can you tell me which of the LLE components
19 have been canceled or otherwise fully disposed of by
20 Duke and WEC or WEC sub-vendors?

21 I'm asking you what components have you made
22 arrangements for where you have no further financial
23 obligations, you don't possess them, you don't have any
24 right to them?

25 A Are you in CMF-5?

1 **Q Yes, sir.**

2 A Oh, Page 2. So all of the equipment from the
3 manufacturer Mangiarotti was four pieces of equipment,
4 the PR and HR heat exchangers, pressurizer, the core
5 makeup tank and the accumulator tank for all the work
6 that has been terminated with respect to those pieces
7 of LLE and that the final disposition has taken place.

8 **Q Okay. Let me stop you there. The**
9 **Mangiarotti items, those four LLE, they're completely**
10 **off your plate, so to speak, you can't -- you couldn't**
11 **sell them or otherwise dispose of them, you fully**
12 **resolved your financial obligation; is that right?**

13 A Yes, that's correct.

14 **Q Okay. Now, the next two?**

15 A Then I would jump up to the RCL pipe from
16 IBF. Just like Mangiarotti, that has been terminated.
17 And we have no obligations back to Westinghouse or the
18 manufacturer and they have no obligations back to us.
19 It's been fully dispositioned.

20 **Q And you don't possess any of those materials**
21 **or items?**

22 A No, we do not.

23 **Q All right. And these items that you listed,**
24 **the four Mangiarotti items and the RCL pipe, you have**
25 **no further obligation under the stipulation for an NCRC**

1 docket relative to these five items; is that right,
2 other than, perhaps, to recover any costs that you paid
3 disposition of these assets, right?

4 A I believe, yes.

5 Q Okay. And for the five we just discussed,
6 the RCL pipe and then the four Mangiarotti items, there
7 were actual tangible assets of some form, they were in
8 some stage of fabrication or they were actually
9 materials that had been ordered and were in the
10 production process; is that right?

11 A Yes, that's correct. For those five, all
12 five of them were in the manufacturing process.

13 Q Okay. So that leaves three items that don't
14 come in the category of either existing LLE or LLE
15 materials or terminated LLE items that were of a
16 tangible nature; is that right?

17 A Well, maybe you could define tangible. But
18 in the case of the reactor vessel internals and the
19 turbine generator, which are the subject of the
20 \$54 million refund claim, no materials were ordered, no
21 work was started on those, so there's no materials to
22 disposition. Both of those purchase orders were
23 suspended.

24 Q Okay. What about the controlled rod -- what
25 is it? I forget what the D stands for.

1 A Controlled --

2 Q **Controlled drive mechanism.**

3 A Yes.

4 Q **CRDM, was anything ever -- it says "not**
5 **started" here, so was there any materials or**
6 **fabrication?**

7 A I don't believe so, no.

8 Q **Okay.**

9 A I think that was a similar situation to the
10 other two where there was no payment made for the
11 CRDMs.

12 Q **Okay. Now, you just testified -- and I know**
13 **we've had a lot of testimony about this -- but the**
14 **54,127,100 plus carrying cost was charged to customers**
15 **for the reactor vessel internals and the turbine**
16 **generator; is that right?**

17 A So in 2009 when the suspension occurred and I
18 guess the subsequent time frame the company came here
19 to say the decision was made to disposition that
20 equipment and suspend it, okay. And part of that was
21 dollars already spent, so it has been reviewed and
22 recovered, some of it recovered from customers.

23 Q **Can you tell me publicly with respect to the**
24 **CRDM how much customers have paid for that LLE?**

25 A I believe that number is zero.

1 Q Okay. So because of that, Duke has not asked
2 for a refund from WEC for a CRDM because there's
3 nothing to be refunded; is that essentially correct?

4 A Yes.

5 Q If you had paid something, would you be
6 asking for it back on the same basis as for the RVI and
7 the TG?

8 A Somewhat hypothetical, not knowing what the
9 change order says, but under the same general principle
10 that if we paid something and didn't get any work, we
11 would most likely ask for the money back.

12 Q Okay. Now, it's also true that for the CRDM
13 the RVI and the TG LLE, these do not represent salvage
14 or sale opportunity to Duke, obviously, because there's
15 nothing there, right?

16 A That is correct.

17 Q And you would agree with me that Duke has
18 demanded that WEC return the \$54,127,100 for the RVI
19 and the TG?

20 A Yes, that's our claim.

21 MR. REHWINKEL: Commissioners, I'm going to
22 now ask questions about another confidential
23 document that's in his exhibit. This will be in
24 his CMF-6 and it is at Page 66.

25 CHAIRMAN BRISE: Sixty-six?

1 MR. REHWINKEL: Yes, sir, of that exhibit.

2 CHAIRMAN BRISE: We don't have 66. Our
3 starts at 67.

4 MR. REHWINKEL: Okay.

5 THE WITNESS: The first page is just a
6 listing of the different correspondence. There's
7 probably nothing material on that page.

8 BY MR. REHWINKEL:

9 Q Okay. Yeah, for purposes of my question, I
10 want to ask you -- it's my mistake, I should have put
11 66 -- I just would like you to state the date of the
12 letter that starts on 66, and my questions to you are
13 really after that.

14 A December 12th, 2013.

15 Q Okay. And this is a letter, if I turn to
16 page --

17 CHAIRMAN BRISE: We should have it now.

18 BY MR. REHWINKEL:

19 Q -- 70 of this letter, this is a letter that's
20 signed by you and it's to -- well, tell me who it's to,
21 if you can, publicly.

22 A This is a letter to the EPC consortium where
23 it went to a Robert Pullman, who was the project
24 director for the consortium.

25 Q Okay.

1 A I'm sorry, consortium project manager.

2 Q Okay. So my question to you is to ask you to
3 turn to Page 5 of that letter, which is Page 70 of the
4 exhibit, and I would ask you to read as much of the
5 paragraphs that are in the middle of that page that are
6 under "Refund of certain milestone payments," as much
7 as you can, and characterize what you need to for
8 purposes of preserving any confidentiality that you're
9 obligated to under the contract.

10 Do you understand my question?

11 A I believe I do. I'll give it a shot here.

12 Q And I want you to make sure that you don't
13 disclose confidential information when you do this.
14 And I'm sure your counsel does too.

15 A Instead of reading it, I may try and
16 summarize it so as to stay as far away from
17 confidential information. And it aligns with what is
18 our claim in federal court in North Carolina.

19 But essentially in the first paragraph, DEF
20 indicates that it paid Westinghouse approximately
21 \$51.7 million for work for the turbine generators. We
22 also state that in a letter WEC acknowledged that no
23 work was performed with respect to these. And then we
24 asked for a refund of that 51.7 million payment.

25 And we also go into the next paragraph where

1 we say that we paid -- in 2008 we paid approximately
2 \$2.3 million for reactor vessel internals. Again,
3 because manufacturer and fabrication never commenced,
4 we asked for our money back.

5 Q Did you say that with respect to both of
6 these paragraphs that work was performed or no work was
7 performed?

8 A Work was not performed. And as such, we
9 asked for our money back.

10 Q Is it true that this letter represents the
11 first formal demand that Duke made of Westinghouse for
12 a refund of this \$54.127 million?

13 A Yes.

14 Q Now, when you made these statements on
15 December 12th, 2013 in this letter, they were true,
16 right?

17 A Yes.

18 Q And I say "these statements," I'm referring
19 specifically to these two paragraphs that you
20 summarized.

21 A Yes.

22 Q And they're still true today; is that right?

23 A Yes.

24 Q I think you started to allude to this, is it
25 based on these statements and the facts they represent

1 that on March 28th, 2014 Duke sued WEC and made very
2 similar statements and demanded that a federal court
3 order WEC to refund those two amounts in those two
4 paragraphs related to the RVI and the TG LLM totaling
5 \$54,127,100?

6 A Yes, that's correct.

7 Q Now I would like you to turn, if you will, to
8 Page 73 of the Exhibit CMF-6, which is Attachment 1 to
9 the same letter we've been talking about, and it's
10 Page 2 of 12 with that Attachment 1. Do you see that?

11 A Yes.

12 Q Okay. And, again, without disclosing
13 confidential information, can you characterize for me
14 what these three columns in this Page 73 represents?

15 A So this was part of communications going back
16 and forth between Duke and the consortium. And when we
17 elected not to construct the Levy project and we were
18 planning for, you know, terminating the EPC agreement,
19 we were working through with Westinghouse, or I should
20 say the consortium, at this time it was both parties,
21 we were attempting to determine what the potential
22 disposition costs would be under the EPC agreement. So
23 that is the background for this particular
24 communication.

25 And in this we had originally in the previous

1 communication, Duke had laid out its understanding of
2 the change order that addressed the turbine generator.
3 And what we've said is that that change order suspended
4 work on the turbine generator and that no work had been
5 completed. Westinghouse agreed with this assessment,
6 but then they added in that there would be termination
7 costs, there was potential for termination costs for
8 their costs to unwind and any work necessary to unwind
9 this purchase order.

10 And then we came back with a response that we
11 indicated that Westinghouse had previously provided us
12 information that we believed that there were no
13 incremental termination costs other than Westinghouse's
14 time and materials to actually terminate the agreement.

15 Q Okay. Would it be fair to say that in
16 Column 2 that if -- hold on a second, I want to ask
17 counsel a question to make sure it's okay to ask him a
18 question.

19 CHAIRMAN BRISE: Okay. What we're going to
20 do is we'll take a two-minute break and let you
21 all resolve this.

22 (Whereupon, a recess was taken.)

23 CHAIRMAN BRISE: We are going to go ahead and
24 get started. Thank you for doing that.

25 MR. REHWINKEL: I'm glad we did because we

1 decided it would probably be better not to ask the
2 question I wanted.

3 While we're in a lull, I have six exhibits
4 that I can distribute now to kind of save some
5 time.

6 CHAIRMAN BRISE: Sure.

7 MR. REHWINKEL: As I said, three of them are
8 confidential. They should all be numbered. But I
9 think staff is going through the process of
10 distributing them. I should have done it earlier.

11 CHAIRMAN BRISE: That's okay.

12 MR. REHWINKEL: I wanted to minimize the
13 amount of time we had confidential stuff laying
14 around.

15 COMMISSIONER BROWN: Mr. Chairman, I hate
16 getting confidential materials mixed up with each
17 other. We were just given a bunch of confidential
18 materials not from staff, I think it may be
19 appropriate to give it back at this point.

20 MR. REHWINKEL: Well, if it is CMF-6, I do
21 have some more questions on that. We can just
22 hold off until we're actually done with that and
23 then we can distribute them, if that would be your
24 preference.

25 COMMISSIONER BROWN: I'm just getting them

1 all mixed up, and I don't want to confuse them.

2 MR. REHWINKEL: Okay. Well, I don't want
3 there to be any problems. We can just hold off, I
4 guess.

5 MR. YOUNG: Mr. Chairman, if it might help,
6 we can collect all of those documents for
7 Mr. Fallon and provide complete copies of his
8 testimony and exhibits to you right now, if that
9 will expedite and not have any confusion. And
10 staff will sort those out because staff knows what
11 documents they are.

12 CHAIRMAN BRISE: Okay. I think that that
13 would make sense for us, if we can have that so
14 that we don't have to have multiple packages that
15 we're juggling. Thank you.

16 So now we may proceed.

17 BY MR. REHWINKEL:

18 Q Okay. Still on Page 73 of your CMF-6. Are
19 you there?

20 A Yes, I'm there.

21 Q In the DEF response column, again, what you
22 said was Duke's position was on December 12th, 2013 was
23 true then, right?

24 A Could you restate the question?

25 Q The position presented by DEF's response as

1 represented in that Column 3 on Page 73, that was true
2 on December 12, 2013, right?

3 A Yes.

4 Q And it's still true today?

5 A Yes, it is.

6 Q Would it be fair to say that Duke's position
7 in that Column 3 on Page 73 is strong support for your
8 claim that WEC owes you the \$54 million?

9 A Yes, that's part of the support for our
10 claim.

11 Q Okay. You answered my next question there.

12 So the position that's represented in the
13 December 12th letter that's in your CMF-6 has not
14 changed one bit since you gave it to WEC on
15 December 12, 2013, right, with respect to the
16 \$54,127,100 that you asked for a refund for?

17 A Our position has not changed.

18 Q Okay.

19 MR. REHWINKEL: Are we going to do that now?

20 CHAIRMAN BRISE: Identify it.

21 MR. REHWINKEL: Okay. I would like to
22 identify an exhibit. The post-it on it says,
23 "Number 1" and the title of it is "Duke v. WEC
24 Complaint." And I need a number for that,
25 Mr. Chairman.

1 CHAIRMAN BRISE: Give me one second, I'll see
2 where we are.

3 MR. YOUNG: It's Exhibit 97.

4 CHAIRMAN BRISE: We're going to the full
5 list, 97.

6 MR. REHWINKEL: That would be 97.

7 (Exhibit No. 97 was marked for
8 identification.)

9 BY MR. REHWINKEL:

10 Q Mr. Fallon, do you have a pen with you?

11 A Yes, I do.

12 Q Would you write 97 on that so we can avoid
13 any confusion?

14 A On here?

15 Q Yes.

16 A Exhibit Number 97?

17 Q Yes, sir.

18 MR. REHWINKEL: I'm trying to learn a lesson
19 from the DSM docket, Mr. Chairman.

20 BY MR. REHWINKEL:

21 Q Are you familiar with this document?

22 A Generally, yes.

23 Q Okay. This is the complaint that was filed
24 on March 28th, 2014 in the Western District of North
25 Carolina?

1 A Yes, that's correct.

2 Q **And this is where you sued Duke (sic) asking**
3 **for the \$54 million back, among other things?**

4 A Yes, Duke sued Westinghouse.

5 Q **Okay. That's what I meant.**

6 **Can you turn to Page 6 of the complaint in**
7 **Paragraphs 27 and 28 and read those aloud for me,**
8 **please?**

9 A Paragraph 27?

10 Q **Yes, sir.**

11 A "Duke Energy made two payments to WEC
12 pursuant to the EPC agreement for work that was never
13 performed as a result of the suspension letter and
14 termination. Milestone payments of \$2,348,660 for
15 reactor vessel internals and \$51,778,440 for turbine
16 generators."

17 Paragraph 28, "Duke Energy is entitled to a
18 refund of these two payments for work not performed as
19 a result of the suspension, but WEC has refused to make
20 a refund or to allow these costs to be used as an
21 offset against WEC's termination costs."

22 Q **You said "offset," but it says "setoff."**

23 A Setoff, sorry.

24 Q **Okay. On Page 7, if you can turn there and**
25 **read Paragraph 32.**

1 A Paragraph 32, "WEC disagree that Duke Energy
2 is entitled to a refund and has failed and refused to
3 return the payment of \$54.1 million for which no work
4 was performed. That failure and refusal is a breach of
5 the EPC agreement. This breach has caused Duke Energy
6 to suffer damages of at least \$54.1 million which Duke
7 Energy is entitled to collect from WEC."

8 **Q Thank you. And then on Page 8, I would ask**
9 **you to read aloud the wherefore clause and then the**
10 **first item under it.**

11 A "Wherefore, Duke Energy respectfully requests
12 that this Court order the following relief: One,
13 judgment in the amount of \$54.1 million with interest
14 from the date of the termination of the EPC agreement
15 for Westinghouse's breach of the contract set forth in
16 Count 1."

17 **Q Okay. Thank you.**

18 MR. REHWINKEL: Mr. Chairman, I would like to
19 ask for a confidential exhibit to be identified.

20 CHAIRMAN BRISE: Sure. That would be 98.

21 (Exhibit No. 98 was marked for
22 identification.)

23 MR. REHWINKEL: And a short title for this
24 would be LLM Disposition Assessment.

25 CHAIRMAN BRISE: Okay. Thank you.

1 BY MR. REHWINKEL:

2 Q Mr. Fallon, do you have that document in
3 front of you?

4 A Yes, I do.

5 Q Are you familiar with it? Write 98 on this
6 one.

7 A Ninety-eight I just wrote on this one.
8 Yes, I'm familiar with this document.

9 Q Okay. This was produced by your predecessor,
10 Mr. Elnitsky?

11 A Yes, that's correct.

12 Q Okay. And would you agree that this was part
13 of his team's ongoing analysis supporting
14 recommendations to management regarding the proper
15 dispositioning of LLM in 2011?

16 A Yes.

17 Q Okay. And would you also agree with me that
18 the sheets in this, supporting sheets that begin at
19 Page 3 contain both a quantitative and qualitative
20 analysis of the various options available to the
21 company?

22 A For the subject piece of long lead equipment,
23 yes.

24 Q I would like you to turn to Page 13. And you
25 can do it by either the Bates stamp or the actual page.

1 I think they are the same. See in the right-hand
2 corner, just so we're all on the same page.

3 Are you at 13?

4 A Yes. Would this be the sheet for the reactor
5 vessel internals?

6 Q Yes.

7 A Yes.

8 Q Okay. Now, underneath -- in the upper
9 left-hand corner it says, "Reactor vessel internal,"
10 right?

11 A Yes, that's correct.

12 Q And I'm asking you this, I'm not telling you
13 to, but I'm asking you can you read to me who the
14 manufacturer is of that LLM without violating
15 confidentiality?

16 A I believe Westinghouse is the manufacturer of
17 this equipment.

18 Q Okay. Do you see in the qualitative
19 assessment analysis section, in the, I guess, lower
20 right-hand corner or quadrant of this sheet?

21 A Yes.

22 Q Do you see that, it's the lighter blue?

23 A Yes.

24 Q Okay. Can you tell me -- I would like to
25 direct you to Questions 3 and 6. Given that this was

1 produced at a certain point in time, can you tell me
2 what those questions are and what the answers to them
3 were at that time?

4 A Question 3?

5 Q Yes.

6 A "Likelihood for resale for noncompleted
7 component in the event of a new third-party AP1000
8 project." And the PEF assessment for that was "No
9 materials have been ordered."

10 Q Okay. And then on Number 6?

11 A "What is the fabrication status?" And PEF
12 assessment was "No fabrication has occurred."

13 Q Okay. So that didn't change from that point
14 to today; is that right?

15 A No, the status has not changed.

16 Q Okay. Let me ask you to turn to the next
17 Page 14. And can you tell me what LLM this relates to
18 and who the manufacturer is?

19 A It's a turbine generator and it relates to
20 Toshiba.

21 Q Okay. Do you know the relationship with
22 Toshiba to Westinghouse?

23 A I believe Toshiba is Westinghouse's -- it's
24 their parent company.

25 Q Okay. Again, looking at the qualitative

1 **assessment there in 2011, same question for Numbers 3**
2 **and 6, can you tell me what the PEF assessment was?**

3 A For Question 3, "A likelihood of resale of
4 noncompleted component, there were no materials have
5 been ordered."

6 Q Yes.

7 A And Question 6 concerning the fabrication
8 status, "No fabrication has occurred."

9 Q Okay. And do you see the lightly shaded blue
10 line at the bottom of that qualitative assessment box?

11 A Yes.

12 Q Can you read aloud starting in the
13 parenthetical with the word "Toshiba" and ending with
14 the word "generator" and please do not read the last
15 part of that? Can you read that aloud?

16 A Okay. "PEF should suspend the PO if
17 favorable suspension terms can be negotiated. Toshiba
18 has agreed via executed change order to suspend turbine
19 generator."

20 Q Okay. And, again, none of these assessments
21 with respect to Items 386 in that qualitative
22 assessment have changed as of today; is that right?

23 A Nothing has changed, yes, that's correct.

24 Q There is no disagreement, is there, between
25 Duke and Westinghouse that materials were never ordered

1 by the vendor or sub-vendor for these components, RVI
2 and turbine generators; is that right?

3 A That is correct. I do not believe there is
4 any disagreement between the parties.

5 Q Okay. And you also would agree that there's
6 no disagreement between the parties, WEC and Duke, that
7 fabrication of these LLM components was never
8 commenced; is that right?

9 A Yes, that's correct.

10 Q Because of these facts and because of the
11 fact that you have terminated the EPC agreement, it is
12 Duke's position, is it not, that customers who paid for
13 these components deserve their money back?

14 A Yes, it's Duke's position that when the
15 litigation is complete and final and there is a
16 judgment rendered by the Court in North Carolina, that
17 Duke will refund any monies that we get out of that
18 case, we will refund those to customers.

19 Q Okay. I appreciate that answer, but you also
20 agree that the customers deserve to have their money
21 back, right? That's why you filed suit?

22 A Yes, that's why we believe customers deserve
23 whatever money they get back in terms of the final
24 disposition of that legal case.

25 Q Okay.

1 MR. REHWINKEL: Mr. Chairman, I would like to
2 -- I'm going to come back to this document so
3 please hold on to it. In fact, if you want to not
4 clutter your -- I'll just go to ask the
5 questions -- I'm going to kind of go out of order
6 so we can kind of get rid of this document, that
7 might be better.

8 CHAIRMAN BRISE: Okay.

9 BY MR. REHWINKEL:

10 Q Let's do this, I want to take you through
11 these real quick, if I can. I'm going to ask you
12 questions related to each of these LLMS that are in
13 this assessment here, and I want to focus on the first
14 question in the qualitative analysis section.

15 A Okay.

16 Q And without regard to whether these
17 components exist today or not, I want to know what
18 Duke's assessment in early 2011 -- these are all kind
19 of the -- the signatures appear to all be in the
20 March/April time frame of 2011; would you agree with
21 that?

22 A Yes, that is correct.

23 Q So Mr. Elnitsky and his team did their
24 analysis, a very thorough analysis at that time, right?

25 A Yes, that's correct.

1 **Q So I'm just going to ask you for each LLM**
2 **what the assessment is for the answer to Question**
3 **Number 1. Can you read Question Number 1?**

4 A Yes.

5 **Q Just read it the first time, because I think**
6 **it's the same question on each sheet.**

7 A Yes, it is. "Likelihood of resale for
8 completed component, considering there is a new
9 third-party AP1000 project."

10 **Q Okay. So let's start with the variable**
11 **frequency drives, what's the assessment there?**

12 A "At that point in time, given the market
13 conditions, the assessment was high likelihood."

14 **Q All right. Squib valves on the next page?**

15 A I guess if you look at the -- I think for the
16 benefit of everyone, if you look at the wording of that
17 question, just to put it in context, it is "What is the
18 likelihood in the case where there is a new." So at
19 this point in time, there were three projects under
20 contract, and this was in the case of if there was a
21 fourth or a fifth would you be able to resale.

22 **Q Yeah, I understand that.**

23 A Which is not the case today.

24 **Q Okay. So, again, for -- let's go to squib**
25 **valves, Page 4, likelihood.**

1 A High likelihood.

2 Q **The next page, RCL pipe?**

3 A High likelihood.

4 Q **Reactor coolant pumps?**

5 A That was not completed. The analysis was not
6 completed, but I believe the answer is medium
7 likelihood.

8 Q **Okay. It looks like the analysis was**
9 **incomplete on other bases other than that, right?**

10 A Yes.

11 Q **If we go to accumulator tank?**

12 A High likelihood.

13 Q **And the HR heat exchanger on Page 8?**

14 A It says, "High likelihood."

15 Q **Then we go to core makeup tank.**

16 A Again, high likelihood.

17 Q **And pressurizer?**

18 A High likelihood.

19 Q **Reactor vessel?**

20 A High likelihood.

21 Q **Controlled rod drive mechanism?**

22 A High likelihood.

23 Q **All right. And reactor vessel internals?**

24 A High likelihood.

25 Q **Turbine generator?**

1 A Hi to medium likelihood.

2 Q Okay. And steam generator tubing?

3 A Hi likelihood.

4 Q Steam generator, other, I guess that's
5 balance, steam generator balance?

6 A Yeah, steam generator balance, high
7 likelihood.

8 Q Okay. And then I think the last two pages
9 are duplicates, reactor coolant pump?

10 A Medium likelihood.

11 Q Okay.

12 MR. REHWINKEL: Commissioner, I'm done with
13 that document so I can now move to Exhibit
14 Number 3, which is a confidential exhibit. This
15 will be 99?

16 CHAIRMAN BRISE: Ninety-nine.

17 (Exhibit No. 99 was marked for
18 identification.)

19 MR. REHWINKEL: And the short title is Duke
20 Meeting Notes. I think it actually says,
21 "WEC/Duke Meeting Notes" on the cover.

22 BY MR. REHWINKEL:

23 Q Mr. Fallon, are you familiar with this
24 document?

25 A Yes, I am.

1 Q Okay. Does this document represent notes
2 that you took in a meeting?

3 A Yes.

4 Q Okay. Can you state aloud what the meeting
5 was and what was the general purpose of the meeting, if
6 you can?

7 A Yes. It was a meeting between Duke Energy
8 and Westinghouse. We were asking -- Duke Energy being
9 "we" in that statement -- were asking for an update on
10 the status of some of the LLE components.

11 Q Okay. If I could ask you to look under the
12 word "purpose" to the fifth dot, the fifth black dot
13 down.

14 A Yes.

15 Q Do you see that?

16 A Yes.

17 Q Without you disclosing or me eliciting
18 confidential information from you, I want to ask you if
19 you can tell me if the information next to that dot
20 represents a change in position by WEC from previous
21 communications you had, specifically as reflected in
22 the December 12th letter?

23 A Your question confuses me because of the
24 reference to the December 12th letter.

25 Q Well, what's the date of these notes?

1 A January 16th, 2014.

2 **Q Okay. So between December 12th, 2013 and**
3 **January 16th, 2014, did Duke -- did WEC's position with**
4 **respect to the subject of this bullet change? And I'm**
5 **asking you because of the word "because" in that first**
6 **line of that item.**

7 A I'll try and stay out of the confidential
8 area here. But for this particular piece of equipment,
9 in an earlier meeting we were told that there were no
10 termination costs with respect to termination of this
11 purchase order. We asked the status of that. We said,
12 since it's a no cost issue, just go ahead and do it.

13 Subsequently at this meeting when we asked
14 for the status, have you done anything on this
15 particular issue, the answer was, no, because of other
16 issues with respect to the -- because of our refund
17 request. So it wasn't -- we were just being cautious
18 because it's not particular to the December 12th
19 letter, but it's rather particular to a series of
20 discussions that we had had with Westinghouse
21 throughout the fall of 2013.

22 **Q Okay. Fair enough.**

23 **Number 4, Exhibit Number 4.**

24 MR. REHWINKEL: Mr. Chairman, I would like to
25 ask that you give a number to that exhibit.

1 CHAIRMAN BRISE: Sure. That would be 100.

2 MR. REHWINKEL: And the short title is

3 Response to OPC Interrogatory Number 21.

4 (Exhibit No. 100 was marked for

5 identification.)

6 MR. REHWINKEL: That would be 100?

7 CHAIRMAN BRISE: Yes, 100.

8 BY MR. REHWINKEL:

9 Q Mr. Fallon, you're familiar with this
10 interrogatory response, right?

11 A Yes, I am.

12 Q And that's because you answered it and
13 provided the affidavit supporting it?

14 A Yes, that's correct.

15 Q Are the answers that you provided in your
16 response to OPC Interrogatory 21 still accurate and
17 correct today?

18 A Yes.

19 Q Specifically, although you conservatively in
20 your response, as you describe it, you conservatively
21 included the \$30 million cancellation fee in your
22 estimate that you provided the Commission in 2010, you
23 state that that \$30 million cancellation fee does not
24 apply now because you've terminated the EPC for cause
25 under Section 22.4; is that right?

1 A That's correct, we terminated the EPC because
2 we could not receive all of the required regulatory
3 approval by January 1, 2014.

4 Q But in 2010 you included it as a potential
5 cost because of the question that was asked was what if
6 you canceled it today, and you didn't know whether it
7 was for cause or not, correct?

8 A That is correct.

9 Q So it was conservative in the sense that you
10 put it in there just to be sure you had corralled all
11 of the costs that might to relate to termination of
12 EPC; is that right?

13 A Yes, I believe that's correct. You were
14 taking an estimate, and it could have occurred at any
15 time prior to that January 1, 2014 date, so being
16 conservative we added that into the amounts.

17 Q Okay. Now, in the last paragraph of that
18 answer, you state that the cost that comprised WEC's
19 alleged claim for \$482 million were never presented to
20 the Commission for its consideration as costs to
21 terminate the EPC; is that right?

22 A I believe the paragraph says we did not
23 assume any such costs in our 2010 estimation of
24 cancellation. Westinghouse never informed us of these
25 potential costs, nor did we include them in our

1 cancellation estimate.

2 Q Okay. So the logical extension of that would
3 be that you did not present them to the Commission for
4 their consideration either, right?

5 A I guess that's a logical extension. We
6 couldn't present something we didn't know about or
7 didn't have.

8 Q All right. Let's go now to your reference of
9 sell or savage -- savage -- salvage the long lead
10 materials. We've already established that there are
11 six tangible long lead material components in various
12 states of fabrication that the customers have or will
13 shortly have paid entirely for; is that right?

14 A Yes, generally.

15 Q And is it your testimony that so far -- well,
16 what is your testimony with respect to receiving any
17 purchase interest in the LLM? I guess you testified
18 earlier today that there has been some?

19 A Through the bid event, we did receive some
20 expressions of interest. So just to back up to better
21 explain it, in the lead-up up to the bid event, we were
22 targeting the end of May, Westinghouse expressed
23 concerns about proprietary data. We still wanted to
24 test the market so we wound up breaking the bid event
25 into two phases.

1 The first phase was going to be expression of
2 interest where we gave a very general description of
3 all of the equipment that would be available for
4 purchase. And then once we got expression of the
5 interest, then we would have a narrower field and we
6 would move forward with the confidentiality agreements
7 necessary to provide them additional data.

8 So on that first step, we did receive some
9 expression of interest. And it varies across from
10 manufacturers, competitors of Westinghouse, down to
11 scrapers of, you know, scrap material companies.

12 **Q Okay. Can you say whether it involves any**
13 **potential AP1000 customers?**

14 A It does not.

15 **Q Okay. Isn't it true that in 2010 Duke told**
16 **the Commission that it expected to be able to sell LLM?**

17 A Yes. In those sheets, as I tried to point
18 out, is that it said, you know, that it was a question
19 and answer if there were a new third-party AP1000, what
20 would be the likelihood of selling it to that party?

21 The predicate of that, meaning the new AP1000
22 customer, has not shown up, so it's tough to compare
23 what was contemplated in 2010 versus what is actually
24 happening now in 2011. And consequently -- you know,
25 subsequently, just around that time of that analysis

1 was the Fukushima event in Japan. And then in 2012 was
2 the Waste Confidence Decision that delayed the issuance
3 of new COLs. So that was prior to those two events
4 which have had a significant impact on pushing the
5 market for new nuclear out a number of years.

6 Q Now, it is true that the sheets that we went
7 through in Exhibit 98, the disposition assessment
8 sheets, had that question asked, what's the likelihood
9 of these LLM being sold to existing AP1000 owners for
10 spares or replacement parts; is that correct?

11 A Let me look to make sure.

12 Q And that would be -- I think if you look at
13 Question 2, if you wouldn't mind reading that aloud.

14 A "Likelihood of retail for completed equipment
15 for use as fleet spares among existing AP1000
16 projects."

17 Q And just turn to Page 4 of the squid valves.
18 Tell the Commission what that says, just for an
19 example.

20 A Let me make sure I get the right slip out.
21 High to medium likelihood.

22 MR. REHWINKEL: Mr. Chairman, I would like to
23 identify an exhibit for cross examination, please.

24 CHAIRMAN BRISE: Sure. We are at 101.

25 (Exhibit No. 101 was marked for

1 identification.)

2 MR. REHWINKEL: And the short title for this
3 is Elnitsky August 3rd, 2010 testimony, Pages 17
4 through 19.

5 CHAIRMAN BRISE: Okay.

6 MR. REHWINKEL: And this is confidential.

7 CHAIRMAN BRISE: All right. Thank you.

8 MR. REHWINKEL: I'm very close to the end
9 here. I think I'm going to make my hour and a
10 half target.

11 CHAIRMAN BRISE: All right.

12 BY MR. REHWINKEL:

13 Q Do you have the document in front of you?

14 A Yes, I do now.

15 Q Okay. Now, I have the entire testimony, if
16 anyone needs to see it, but I want to ask you about a
17 nonconfidential portion of the testimony and ask you to
18 read on Page 19, which is the last page of that
19 exhibit, starting on line -- well, actually, if you
20 could read starting on Line 3, and just omit the
21 numbers, there's three confidential numbers there, I
22 guess they're still confidential, I don't know, but
23 they have been deemed that way so I'm going to treat
24 them that way.

25 Can you read starting with the "Total

1 **estimated" all the way down to -- just read that**
2 **paragraph, if you would.**

3 A "The total estimated cost to cancel the
4 project shortly after obtaining the COL under Option 4
5 is X. This includes the estimated Y to continue with
6 the partial suspension and obtain the COL in the
7 incremental estimated Z and cancellation and project
8 wind-down cost to cancel the project after obtaining
9 the COL. It bears emphasis that the estimated
10 incremental costs are conservatively high. PEF has not
11 offset these costs for salvage value for equipment as
12 completed and available commercially for new or
13 replacement parts on the project. PEF has also
14 conservatively included a full balance of the LLE
15 disposition cost from the project cancellation option.
16 In this option, even though PEF will continue with LLE
17 payments under this option for three additional years
18 and therefore lowering the final disposition cost for
19 this equipment, if the project is canceled after the
20 COL is obtained."

21 **Q Okay. Thank you.**

22 MR. REHWINKEL: Last exhibit, Mr. Chairman.

23 CHAIRMAN BRISE: 102.

24 (Exhibit No. 102 was marked for
25 identification.)

1 MR. REHWINKEL: And the short title is AP1000
2 Articles.

3 CHAIRMAN BRISE: You said articles?

4 MR. REHWINKEL: Yes, sir.

5 BY MR. REHWINKEL:

6 Q Mr. Fallon, are you familiar with the two
7 news items that are generally reflected in these
8 articles?

9 A Yes, I've previously read these articles.

10 Q Okay. The first article says that
11 Westinghouse says it's near a deal for 26 new reactors
12 in China. Do you see that?

13 A Yes.

14 Q And that's a statement reported in the
15 Nuclear Power Energy News, it appears, from Danny
16 Roderick, who is Westinghouse's CEO, right?

17 A Yes, that's correct.

18 Q Used to be sitting in that chair on behalf of
19 Duke, right?

20 A I believe so, yes.

21 Q Is it Duke's position that 26 new reactors in
22 China represent no opportunity to sell LLM?

23 A No. However, we've inquired with
24 Westinghouse on not only these particular projects but
25 also previously announced projects as to their interest

1 in the LLE, LLM, and we have consistently received an
2 answer that they were not interested in these
3 materials.

4 Q If you can answer this, fine; if you don't
5 want to, that's fine too. But I just want to ask you
6 aloud if you paid Westinghouse \$482 million that they
7 asked for in their lawsuit, do you think their attitude
8 about selling LLE would change?

9 A I guess I would prefer not to answer that
10 question.

11 Q Okay.

12 A Because I don't believe the 482 is a valid
13 number to begin with, so I never want to admit that I
14 even think about paying it.

15 Q Just for the record, you have told
16 Westinghouse, A, you don't owe it and you've told the
17 federal judge that you don't owe it, correct?

18 A Yes, that's correct.

19 Q So my question is if you have changed your
20 mind and agreed to pay it, do you think Westinghouse's
21 attitude about helping you dispose of these LLEs would
22 change?

23 MR. ANDERSON: Objection, calls for
24 speculation.

25 MR. REHWINKEL: He's the guy in charge of

1 disposing of LLM, I'm just wondering if he has an
2 opinion about it.

3 MR. ANDERSON: Well, you're asking him
4 whether Westinghouse would change their mind.

5 CHAIRMAN BRISE: I tend to agree. Good try
6 though.

7 MR. REHWINKEL: I don't think it needs an
8 answer.

9 BY MR. REHWINKEL:

10 Q What about the second article, Southern says
11 they want to add another -- what is it, is it, another
12 double unit?

13 A I believe you would put it in as a pair, yes.

14 Q Okay. So have you talked to Southern in
15 light of this new information? I guess this is new,
16 this is the first time the public heard about it is
17 within the last couple of weeks, right?

18 A I have not reached out to Southern since this
19 article has come out, right. I had previously reached
20 out to -- contacted Southern, and they did not express
21 any interest in our LLE.

22 Q Okay.

23 A However, they have not filed for a COL yet
24 so, you know, this project is many years off by the
25 time you go through the COL process and actually build.

1 Q I understand.

2 Let's see, I think there was just one
3 question punted to you, and that was about partial
4 suspension letter. That was in April 30th, 2009; is
5 that right?

6 A Yes.

7 Q Two other questions I needed to ask you based
8 on the LLM assessment sheets. Could you -- I
9 apologize, I probably should have done this earlier,
10 could you turn to Page 13 and tell me does this
11 assessment sheet for the RVI indicate what year the
12 2,348,660 was paid to WEC?

13 A Yes, that payment occurred in February of --
14 or it occurred in 2008.

15 Q Okay. And then if you turn to the next page,
16 if you look under the 2009 column the 51,778,440, do
17 you see that number?

18 A Yes.

19 Q And then that shows it in 2009?

20 A Yes.

21 Q Would you agree with me that that payment was
22 made in February of 2009?

23 A I don't know if it was paid in February or
24 not. It may have been January.

25 Q Okay. But it was --

1 A But regardless.

2 Q But it was paid before you suspended -- you
3 **did this partial suspension letter, you're sure of**
4 **that?**

5 A I believe so, yes. You say I'm sure. I
6 looked at the EPC contract during the break, and that
7 payment was scheduled for January of 2009. So when the
8 actual payment occurred, I am not 100 percent positive.

9 Q **Okay.**

10 MR. REHWINKEL: Mr. Chairman, those are all
11 of the questions I have. Thank you. Thank you,
12 Mr. Fallon.

13 CHAIRMAN BRISE: All right. Thank you very
14 much.

15 Mr. Brew?

16 MR. BREW: Thank you.

17 CROSS EXAMINATION

18 BY MR. BREW:

19 Q **Good evening, Mr. Fallon.**

20 A Good evening.

21 Q **Very quickly on Page 14 of your May**
22 **testimony.**

23 A Please give me one second to get there.

24 Q **Sure.**

25 A Did you say Page 14?

1 Q Yes.

2 A I'm there now.

3 Q Do you see the answer that begins on Line 6
4 that says, "When DEF terminated the EPC agreement"?

5 A Yes.

6 Q Okay. And there on Line 8, you referenced
7 that "Duke requests for a time and materials term under
8 the master services agreement under which WEC support
9 the Duke Energy operating fee." Do you see that?

10 A Yes, that's correct.

11 Q Which Florida units does WEC support?

12 A Currently they do not support -- at least I
13 don't believe they support any of the -- the Crystal
14 River, I do not believe they support Crystal River
15 decommissioning. However, we do have a company-wide
16 master services agreement with Westinghouse.

17 Q So you're tied in with Westinghouse but not
18 for support of any of the existing Duke Energy Florida
19 operating fleet?

20 A I do not believe so.

21 Q Okay.

22 A There is no Duke Energy Florida operating
23 fleet at this point.

24 Q So in that regard, Duke Energy overall
25 requires ongoing services from WEC but not Duke Energy

1 **Florida?**

2 A Yes, that's correct.

3 Q Okay. And then on Line 9 you reference
4 "WEC's continuing help with the disposition of
5 remaining Levy LLE with WEC suppliers." Do you see
6 that?

7 A Yes.

8 Q Under the EPC is Duke required to work
9 through Westinghouse to accomplish the disposition of
10 the remaining Levy LLE?

11 A Yes. The EPC agreement is structured such
12 that the purchase orders for the LLE is between
13 Westinghouse and the sub-suppliers.

14 Q So you can't do it without them?

15 A There is a provision in the EPC contract that
16 would allow us to assume the subcontracts. We have
17 requested from Westinghouse a copy of those
18 subcontracts so that we could evaluate whether we
19 wanted to execute that option or alternative. To date
20 Westinghouse has not been willing to provide us a copy
21 of those subcontracts so that we could make that
22 evaluation.

23 Q So you've terminated the EPC but you're
24 working through Westinghouse to disposition the LLE
25 equipment pursuant to the EPC; is that right?

1 A There are certain provisions -- and sometimes
2 the way you've stated it, I have to be careful here --
3 but there are provisions of the EPC that have survived
4 termination. And I believe some of the LLE disposition
5 are sections that survived termination.

6 **Q But to do so with respect to the**
7 **subcontractors and vendors, you would need to actually**
8 **get the information from Westinghouse that Westinghouse**
9 **has to this point failed to provide?**

10 A Right. I would like to correct what I said
11 there is that right now since the EPC agreement is
12 terminated, we have no means of compensating WEC for
13 their time to support this, and as such, they have not
14 been willing to support our termination to date, our
15 disposition of the LLE.

16 **Q So Westinghouse is not supporting it. You**
17 **still have long lead time equipment to disposition?**

18 A That is correct. Mr. Rehwinkel went through
19 six of them, I believe, that are still outstanding.

20 **Q But you have to -- in order to accomplish**
21 **that, you have to work through Westinghouse?**

22 A Right.

23 **Q But you have no means of paying them,**
24 **Westinghouse to do that?**

25 A We have offered to use the master services

1 agreement. Westinghouse declined that offer.
2 Westinghouse proposed a letter agreement to which we
3 generally had come to terms, but there are one or two
4 terms that are still outstanding that neither party
5 will move on.

6 **Q But as of today?**

7 A As of today, no, there's no agreement in
8 place for Westinghouse supporting us.

9 **Q Okay. So there's no way to actually**
10 **accomplish the remaining LLE disposition?**

11 A Absent taking ownership of the subcontracts.

12 **Q Which you need Westinghouse's support to do?**

13 A Well, I mean, the contract provides for it
14 and we're trying to figure out how we -- if that is a
15 viable option or not.

16 **Q Okay. And later in your testimony, you**
17 **provide a summary of where Duke stands with respect to**
18 **its pursuit of the COL; is that right?**

19 A Yes.

20 **Q And you provided similar testimony to that**
21 **effect last year, right?**

22 A Yes.

23 **Q Okay. And on Page 14, Line 14, you talk**
24 **about Duke's need for a relationship with Westinghouse**
25 **to allow Duke to continue to access Westinghouse's**

1 **confidential and proprietary AP1000 information; is**
2 **that right?**

3 A Yes, that's correct. The EPC agreement was
4 the vehicle through which Duke Energy Florida was
5 granted access to that proprietary data and
6 intellectual property.

7 Q Do you currently have access though to the
8 information in light of the termination of the EPC?

9 A Yes, we do. Westinghouse has provided us a
10 revocable license to use that information.

11 Q Okay. And to the extent that Duke determined
12 not to further pursue the COL, you would no longer have
13 need to access that information; is that right?

14 A That is correct, yes.

15 Q Okay. And Duke is paying Westinghouse under
16 that revocable agreement; is that right?

17 A No, we're not.

18 Q Okay. You're not?

19 A No. And just as clarification, I believe
20 Florida Power & Light has a similar agreement with
21 Westinghouse, theirs may not be revocable. And Duke
22 Energy Carolinas for the Lee Plant has the right to use
23 that IP to get its COL.

24 Q You have other units that have similar
25 arrangements with Westinghouse?

1 A I do not. I cannot speak to what -- I know
2 just the way we have been dealing with Westinghouse, I
3 assume that FP&L has an agreement of some sort in
4 place. I know for the Duke Energy Carolinas, we do
5 have a memorandum of understanding in place that allows
6 us to use propriety data.

7 **Q For the lead unit?**

8 A For the lead unit.

9 **Q Okay. Is that revocable?**

10 A I assume it's a revocable.

11 **Q Do you know?**

12 A I don't know. I don't have it in front of me
13 to look.

14 **Q Okay. On Page 15 of that same testimony,**
15 **getting back to the Duke lawsuit for the 54.1 million**
16 **on Line 20.**

17 A Page 15, Line 20, yes.

18 **Q It says, "Duke sued WEC for breach of**
19 **contract for of 54.1 million." Do you see that?**

20 A Yes.

21 **Q Okay. By bringing a claim for breach of**
22 **contract, are you saying -- is Duke's claim that**
23 **pursuant to the terms of the EPC, they must refund**
24 **those dollars?**

25 A I'm not our attorney to determine the legal

1 strategy, but I guess it's our belief that under the
2 EPC agreement, work was not performed and as such we
3 are entitled to a refund.

4 Q On Page 20 of that testimony, this is in the
5 section concerning the Levy combined operating license
6 application update.

7 A Yes.

8 Q Okay. On Page 20, there's a series of
9 questions and answers regarding the WEC condensate
10 return design change. Do you see that?

11 A Yes, that's correct.

12 Q Now, as I read your testimony, that problem
13 was identified in late 2012 and discussions continued
14 with Westinghouse and the NRC, at least through the
15 summer of 2013; is that right?

16 A Yes.

17 Q Okay. Did Duke inform this Commission of
18 that issue in last year's NCRC?

19 A Subject to checking my testimony, but I
20 believe -- I mean, we have generally made the
21 Commission aware that there are design changes that
22 occur during construction that may impact the license
23 and the schedule. This would fall into that bucket.
24 But I can't remember exactly what we reported based
25 upon what was available at the time.

1 Q Do you know if you specifically identified
2 this problem?

3 A If it occurred in August of last year, I
4 assume we would have included it in the COL update
5 portion of my testimony, subject to check.

6 Q Okay. So on Page 21, Line 5 says, "On May 23
7 of 2013, WEC told DEF that the containment cooling
8 condensate return calculations necessary to support the
9 design change would not be available until September of
10 2013, almost another four months." Do you see that?

11 A Yes.

12 Q So Duke would have had a chance to update the
13 Commission on the state of that design change in last
14 year's NCRC. Did it?

15 A We had -- I think we were deferred given the
16 status of the settlement agreement, so we did not
17 testify last year. And this would have occurred after
18 my May 1 testimony. So we would not have provided this
19 specific update to the Commission last year.

20 Q That specific item from Westinghouse, but you
21 were discussing that issue with Westinghouse and the
22 NCRC throughout the first half of 2013, weren't you?

23 A Right. And if I can find my -- I'll check my
24 2013 testimony, but I assume we would have, as we
25 traditionally do, told you exactly where we stood based

1 upon the publicly available information and what we
2 thought the current schedule was going to be.

3 Q Okay. Thank you.

4 MR. BREW: That's all I have.

5 CHAIRMAN BRISE: Thank you.

6 Mr. Moyle?

7 MR. MOYLE: Thank you, Mr. Chairman.

8 CROSS EXAMINATION

9 BY MR. MOYLE:

10 Q Good evening, Mr. Fallon. I'm Jon Moyle on
11 behalf of the Florida Industrial Power Users Group.

12 A Good evening, Mr. Moyle.

13 Q I want to ask you some kind of high level
14 questions. I don't want to get too far down in the
15 weeds if we can avoid it. But if you have to go
16 reference documents, please feel free to do so.

17 I wanted to spend a little time talking about
18 the long lead equipment that you all have paid for and
19 where things stand. How much did Duke pay for long
20 lead equipment? Was it the 190 number that you had
21 referenced earlier?

22 A In total?

23 Q Yes, sir.

24 A I believe it's approximately \$320 million,
25 give or take.

1 Q Okay. And how much of that 320 have you made
2 **efforts to dispose of to date?**

3 A Well, I believe we've attempted to dispose of
4 all the material that's in our possession. I have to
5 go through -- you know, I think the 190 of that 320 is
6 where Mr. Rehwinkel said there was tangible materials.
7 However, that was what was paid. That may not be the
8 market value of that equipment. And that 320 also
9 represents, you know, the disposition decisions coming
10 out of the 2009 suspension.

11 Q What I'm just trying to do is to understand,
12 **okay, 320 is what has been paid. When something has**
13 **been sold or otherwise disposed of, it gets scratched**
14 **off a list, right?**

15 A Yes.

16 Q Okay. So what I'm trying to understand is
17 **out of 320 possible dollars, how many dollars, give or**
18 **take -- I mean, I'm not going to hold you to the exact**
19 **dollar -- but how many of those \$320 million have sort**
20 **of been scratched off the list, if you will, and are no**
21 **longer in play, do you know?**

22 A I would have to look at the material that's
23 been suspended. When you say out of play, I guess very
24 little or none of it has really been sold. Parts and
25 pieces have been disposed of, but they're a very small

1 amount of dollars.

2 So now you're looking at payments that were
3 required under the contract and part of the 2009
4 suspension. So I would have to go through and do the
5 math. But, you know, a lot of that comes with pieces
6 of equipment that were suspended or terminated because
7 materials had been ordered or whatever, those payments
8 were still required.

9 Q Okay. I appreciate that, but what I'm just
10 trying to do is to understand. As we sit here today,
11 part of what I think you're charged with doing is
12 providing a report on where you are with respect to
13 disposition of equipment that you have paid for but
14 then ratepayers, I think largely, have also paid for
15 it. And if it won't take you long, I'm happy to have
16 you refer to information. You know, is it 50 percent
17 of that 320, is it, you know, 150, 160, just kind of a
18 value of it, if you can answer that question?

19 A I guess I don't quite understand what your
20 question is. I mean, I believe you're somewhat trying
21 to simplify the situation and say, well, you spent 320,
22 how much are you going to get back. But I don't
23 believe it's that simple of a situation, right.

24 The 320 is comprised of, you know, settlement
25 and suspension costs and things that occurred back when

1 the decision in 2009 was made. Now we have some LLE
2 that's left over that we're trying to minimize the cost
3 of disposition and maximize any return that we would
4 get from it.

5 **Q Do you all track things like the turbine**
6 **generator or the reactor vessel internals? Do you all**
7 **track those when they're disposed of and have something**
8 **that says, hey, we got X or Y? Those I know you didn't**
9 **get, right?**

10 A Right. So we had no materials to dispose of
11 there. And what we've done in that particular case is
12 we've asked for a refund because no work was done and
13 no materials were procured.

14 **Q Okay.**

15 A So for the equipment that we didn't
16 manufacture for Mangiarotti and Tioga, what we looked
17 at there was what was the cost to complete versus the
18 cost to terminate and what was the market to sell that
19 once it was complete versus the cost to terminate, and
20 we elected to terminate that and disposition that.

21 And we believe that resulted in savings to
22 the customers based upon the current market today for
23 resale and the cost that we avoided by terminating
24 instead of completing manufacture of that equipment.

25 **Q So are you able to answer a question if I**

1 **said, okay, 320 is what you testified to as the number**
2 **that you have paid related to this long lead equipment**
3 **item, you know, how much has come back to ratepayers as**
4 **we sit here today of the 320?**

5 A Almost zero.

6 Q Zero or almost zero?

7 A Yes.

8 Q And with respect to -- you know, it's hard to
9 **see beyond the horizon, but do you have any expectation**
10 **as to based on what remains in your possession, you**
11 **know, what is a reasonable bandwidth that may be coming**
12 **back?**

13 A Given that we have an active bid process in
14 place and we're still in discussions, I would prefer
15 not to compromise that bid event by coming up with
16 numbers. I will just state that our desire is to
17 maximize -- or our intent -- we're working towards
18 maximizing the value we can get out of that event.

19 Q **Is that all going to be done by the end of**
20 **this year?**

21 A That is our hope and that is what we are
22 working towards.

23 Q **Now, are you going to notify the Commission**
24 **on how that goes with some kind of a filing or update**
25 **to say, okay, you know, we're done with all of the long**

1 **lead equipment, at the end of the day our net, net**
2 **number is X or Y? Is that something that has been**
3 **contemplated or if it hasn't been contemplated could**
4 **you do it?**

5 A I mean, if it's not part of a normal cycle,
6 I'm sure that next year when we come to report our
7 costs for the NCRC, our actuals for 2014, that
8 information will be available to you and everyone else.

9 Q **And currently you're spending \$3 million a**
10 **year in insurance and storage; is that right?**

11 A Yes.

12 Q **So what are you insuring and storing that is**
13 **3 million bucks? Go ahead.**

14 A Most of that cost goes with the steam
15 generator tubing which was just completed at the end of
16 2013 time frame, I believe, subject to check, so we've
17 just started to incur that cost. And that was one of
18 the pieces of equipment that we were, you know, hoping
19 to be able to sell. However, we have not seen the
20 market for that that we would have hoped.

21 So we are working -- knowing that we do have
22 storage and insurance costs, we are working quickly to
23 make a disposition decision around that equipment.

24 Q **So have you put that steam generator out for**
25 **a bid yet?**

1 A Yes, we have.

2 Q And did you get any bids for that?

3 A We did get an expression of interest, but we
4 have not received bids.

5 Q So at this point, your market value of that
6 would be what?

7 A Again, since we have an active bid process, I
8 would rather not make any kind of an estimate here and
9 compromise that process.

10 Q That's fair. And I'm not trying to push you
11 on that.

12 A No, I understand.

13 Q We'll have this conversation, I guess, at
14 some point. I'm just trying to get a sense of the
15 order of magnitude.

16 You had made a comment about the delay in
17 obtaining licensure based on the waste confidence rule
18 and the Fukushima events. As we sit here today, are
19 those issues still continuing to have a delay impact on
20 the issuance of licenses in your view?

21 A Well, I believe waste confidence should be
22 settled. The latest schedule has the Commission
23 issuing an order in the earlier October time -- the NRC
24 Commission being the Commission in that statement --
25 issuing an order in the early October time frame,

1 becoming final in the November time frame, at which
2 time they would be able to issue new COLs.

3 As to the Fukushima, I think worldwide you
4 are starting to seeing a falling in the freeze and
5 people are starting to look at projects again.
6 However, you know, I'll use our Lee project for an
7 example, we had to do an updated seismic analysis as a
8 result of Fukushima, so we're still in the process of
9 doing that updated seismic analysis, so that is
10 delayed.

11 So waste confidence is no longer the long
12 pole in the tent in order to get a license, but it's
13 rather some of these. And for Levy, waste confidence
14 is no longer in long pole in the tent, but rather it's
15 resolution of the condensate return design issue.

16 **Q And the project that you referenced, what was**
17 **the name of that one?**

18 A The Lee project?

19 **Q Lee, is that right?**

20 A Williams States Lee in Cherokee County, South
21 Carolina.

22 **Q And that's part of your portfolio, right?**

23 A Duke Energy Carolinas, right.

24 **Q Right. But you work for Duke Energy, the**
25 **parent, right?**

1 A Yes.

2 Q So you have nuclear responsibility for Duke
3 Energy Florida for operating companies in Indiana,
4 North Carolina, South Carolina?

5 A Yes.

6 Q Okay. How many nuclear projects are
7 currently ongoing with Duke?

8 A We are pursuing two licenses for the Levy
9 plant and for the Lee plant.

10 Q And in the Lee plant, is Westinghouse your
11 vendor?

12 A Yes. It's also the AP1000 design.

13 Q I'm a little bit just curious, are the people
14 that you're trying to work cooperatively with in this
15 plant -- and is it a North Carolina or South Carolina?

16 A It's in South Carolina.

17 Q Are they the same people that you're not
18 really working so well with right now in the
19 litigation?

20 A In general, yes. So we're not in active EPC
21 negotiations with Westinghouse at this point on Lee.

22 Q I guess you would have to be pretty clear
23 about when your scheduling calls with them what is
24 going to be discussed?

25 A Well, we haven't had many discussions about

1 this, right.

2 Q Do you know, does Duke -- and I say "Duke,"
3 let's just throw all of the companies in -- do they do
4 business with Westinghouse in a nonnuclear context?

5 A I don't believe West -- I mean, with the
6 exception of their recent purchase of Mangiarotti, I
7 don't believe they have much of a portfolio outside of
8 the -- they are generally a nuclear services and
9 nuclear technology company. So my only dealing with
10 Westinghouse has been in the nuclear arena. And
11 Westinghouse does provide support for the Duke Energy
12 operating fleet in the Carolinas.

13 Q I think in response to a question from one of
14 the other lawyers, you had said that Duke sued
15 Westinghouse for the 50 million because you paid for
16 certain things and you never got them; is that fair?

17 A Yes, that's correct.

18 Q Okay. And when you said those things, just
19 to be clear, we're talking about the turbine generator
20 and the reactor --

21 A Reactor vessel internals.

22 Q Yeah. And Mr. Foster didn't know what
23 reactor vessel internals were. What are those, just
24 briefly?

25 A I mean, they are components inside the

1 reactor vessel.

2 Q Okay.

3 A As simply as I can put it, they're the
4 components inside the reactor vessel.

5 Q Okay. And that's a 2 million, \$3 million
6 issue, and the steam generator is a \$50 million issue,
7 right?

8 A The turbine generator is.

9 Q I'm sorry, the turbine generator.

10 Well, given the logic that Duke has sued
11 Westinghouse and said we paid for this and we didn't
12 get anything, wouldn't you agree kind of a parallel
13 logic that by OPC saying essentially the same thing to
14 this Commission and saying, hey, we paid for these two
15 components and they were never delivered, we never got
16 anything, we should seek some relief and have some
17 relief, wouldn't -- don't you agree that there's
18 parallel logic to that position?

19 A We believe that if we're successful in our
20 lawsuit, that any money that comes back will go to
21 credit customers. You know, the suspension of the
22 purchase order that result for the reactor vessel
23 internals and for the turbine generator were part of
24 the 2009 suspension. And we have not fully
25 dispositioned the turbine generator and reactor vessels

1 because they are still outstanding POs. They've been
2 suspended but not terminated.

3 So my position is they would be part of
4 termination costs and they should be handled with all
5 of the other termination costs in this case.

6 Q I understand. So just to go back to my
7 question.

8 A I thought I was.

9 Q I'm sorry.

10 A I thought I did answer your question, I'm
11 sorry.

12 Q I don't think you did because in the
13 Commission, a lot of times, it's in the order that says
14 we would like to have a yes or a no and then if you
15 need to explain. So I think you may have given an
16 explanation without a yes or no.

17 So I want to go back to my question, and
18 we'll all have a record if we can do this.

19 A Yes, I --

20 Q Hold on. You would agree that the parallel
21 logic that you stated as to why you sued Westinghouse
22 would also apply to OPC's effort as to why they are
23 asking this Commission to refund \$54 million, correct?

24 A I'm not sure I agree with that.

25 Q Okay. Then I guess you could say no and

1 explain why you don't or you can say yes and explain
2 why you do.

3 A No. What I've said is I don't know if I
4 agree with your statement or your hypothetical. What I
5 said is I do believe that if we're successful, that the
6 customers should get the benefit of that judgment from
7 the court system and that we will take care of it at
8 that time. And it's part of the overall termination
9 and disposition of the Levy EPC contract because that
10 suspension was approved back for the 2009 suspension,
11 and I believe it's appropriate to address it at that
12 time.

13 Q Okay. So if Westinghouse said to you, well,
14 we understand you've written letters and asked for this
15 \$54 million back, but it's part of a larger thing and,
16 you know, we don't really want to deal with that until
17 later, you know, would that be something you would say,
18 oh, okay, I get that, that's understandable?

19 I mean, isn't really this whole thing a
20 matter of timing? I don't think you disagree with the
21 premise that the ratepayers are saying we paid
22 54 million, we didn't get anything, we would like a
23 credit?

24 A It's a contested litigation and Westinghouse
25 has not agreed with our position. And if you read

1 their papers, they disagree with us, so it is a
2 contested litigation.

3 And I guess that's my -- if Westinghouse --
4 to give you the hypothetical, if Westinghouse had said
5 we agree with you 100 percent, Duke, then I think we
6 would be in a different spot. But they have not said
7 that. What they have said is we vehemently disagree
8 with you, just like we vehemently disagree with their
9 \$512 million.

10 Q Over the years in your career, I assume
11 you've been involved in or been aware of some
12 litigation matters, correct?

13 A Yes.

14 Q As a general rule, those oftentimes take
15 quite a bit of time to resolve, correct?

16 A Yes, that's correct.

17 Q And in the litigation matter involving
18 Westinghouse, you all have taken the position -- I know
19 there's a complaint -- but you all have essentially
20 taken the position that you don't owe Westinghouse a
21 nickel, right?

22 A Yes.

23 Q And, in fact, they owe you \$54 million,
24 correct?

25 A Yes, that is our position.

1 **Q Right. And have you been involved in that?**
2 **Are you familiar with that?**

3 A Yes, I'm familiar with that.

4 **Q Okay. And as we sit here today, then you're**
5 **comfortable and confident in that position. And based**
6 **on all of the things you've looked at and the studies**
7 **and everything, you know what, they owe you**
8 **\$54 million, correct?**

9 A Yes, I'm confident in our position. However,
10 I will say, again, it is a contested litigation and,
11 you know, until the final resolution of that occurs, I
12 don't know what that outcome is going to be.

13 **Q I understand. I'm interested in your view of**
14 **your litigation position. I think you've testified**
15 **you've looked at it, you've studied it and you're**
16 **confident in the position, correct?**

17 A Yes, we're comfortable with our position.

18 MR. MOYLE: If I could just have one quick
19 second.

20 BY MR. MOYLE:

21 **Q One other just brief follow-up. What is a**
22 **master services agreement?**

23 A That is a general agreement that has the
24 terms and conditions under which a vendor would do work
25 with Duke so that you don't have to renegotiate the

1 contract for every scope of work but rather you agree
2 to a master services agreement that has the terms and
3 conditions, and then you may tweak it for individual
4 scopes of work. But generally that way you can do
5 work, you know, fairly quickly without the expense of
6 renegotiating a contract every time.

7 **Q Okay. So there's currently one in place with**
8 **Westinghouse; is that right?**

9 A Yes. And it's been in place for a number of
10 years.

11 **Q Okay. And it covers Levy?**

12 A It could, right. It's just a general scope
13 of work between the two parties. Previously the work
14 for Levy was being done under the EPC agreement. After
15 the EPC agreement was terminated, we suggested that we
16 move any time and materials work that Westinghouse
17 would perform for us to help with the disposition of
18 LLE to move it under the master services agreement,
19 thinking -- Duke's thinking was your company has
20 already been operating under this for a number of
21 years, obviously your company is comfortable with this
22 agreement, and we thought it would just be a very
23 smooth transition. That has not played out the way we
24 had anticipated.

25 **Q And they said no thank you to that offer?**

1 A They said no thank you to that.

2 **Q And that same agreement is used for your Lee**
3 **project; is that right?**

4 A Yes, we have a master -- for the work that
5 they perform under that agreement, yes.

6 **Q So just so I'm clear, is there one master**
7 **service agreement or one for Lee and one for Levy?**

8 A No, no. There's -- I believe there's a Duke
9 Energy Carolinas master service agreement. And then
10 prior to the merger between the two companies, there
11 was a Progress Energy master services agreement.

12 I don't know at this point whether or not
13 those two contracts have been consolidated, but I
14 believe we said use the Duke Energy Carolinas master
15 services agreement in our offer.

16 **Q And just so -- do you know what the -- are**
17 **you familiar with that contract or no?**

18 A Not in great detail.

19 **Q All right. From your perspective, I mean,**
20 **the ratepayers have skin in that game, you would agree,**
21 **correct?**

22 A Yes.

23 **Q Okay. And Westinghouse, based on your**
24 **testimony, is not cooperating or trying to be very**
25 **helpful in disposing of the long lead item equipment;**

1 **is that fair?**

2 A Yes.

3 Q **Okay. Is there anything, from your**
4 **perspective, that the ratepayers might be able to do or**
5 **this Commission might be able to do to assist -- to**
6 **encourage Westinghouse to be maybe a little more**
7 **cooperative in disposing of the long lead equipment?**

8 A I cannot think of anything right here that
9 would be helpful. I mean, we are going to pursue every
10 option and avenue we can in order to move this along,
11 but I don't know anything this Commission or the
12 customers can do at this point.

13 Q **All right. Well, thank you for answering my**
14 **questions.**

15 **CHAIRMAN BRISE: Thank you.**

16 **Mr. Wright?**

17 MR. WRIGHT: No questions, Mr. Chairman.

18 Thank you.

19 CHAIRMAN BRISE: Okay. Staff?

20 MR. YOUNG: No questions.

21 CHAIRMAN BRISE: Commissioners?

22 Sure. Commissioner Balbis.

23 COMMISSIONER BALBIS: Thank you and thank you
24 for your testimony. I just have one question.
25 You included in your CMF-6 documentation the

1 parties' lack of interest in some of the LLE
2 items?

3 THE WITNESS: Yes.

4 COMMISSIONER BALBIS: Is that the extent of
5 your discussion with those parties and has that
6 been completed or are there going to be continued
7 inquiries moving forward?

8 THE WITNESS: You know, we've asked the
9 question and we received an answer that, no, they
10 weren't interested. You know, when I see them in
11 business settings, I will inquire as to their
12 interest, but I have not received any new
13 information that would give me an indication that
14 they weren't interested.

15 COMMISSIONER BALBIS: And do you feel that
16 that level of response that was included in your
17 exhibit is sufficient to make the determination
18 that parties aren't interested and pursued other
19 options?

20 THE WITNESS: Well, you know, we called, we
21 sent an email, and then we included them on the
22 bidders' list for the bid event. So we've tried
23 different alternatives in order to get a reading
24 on a level of interest, and to date there has not
25 been a level of interest.

1 COMMISSIONER BALBIS: Okay. Thank you.

2 That's all I had.

3 CHAIRMAN BRISE: All right. Commissioners,
4 anything else?

5 (No response.)

6 CHAIRMAN BRISE: All right. Seeing nothing
7 else, redirect?

8 MR. ANDERSON: Just one brief question.

9 CHAIRMAN BRISE: Sure.

10 REDIRECT EXAMINATION

11 BY MR. ANDERSON:

12 Q Mr. Fallon, you were shown this Exhibit 102,
13 which was the newspaper articles about Westinghouse's
14 plans?

15 A Yes.

16 Q In these articles, is there any indication in
17 the articles that Westinghouse actually has an EPC deal
18 with any of these Chinese entities for these new
19 reactors or with Southern Company for their announced
20 new nuclear plant hopes?

21 A In both of these articles, these are both
22 speculative at this time and Westinghouse does not have
23 a contract with any of these entities.

24 MR. ANDERSON: No further questions.

25 CHAIRMAN BRISE: All right. Thank you. Now

1 let's deal with exhibits.

2 MR. ANDERSON: We would move in evidence the
3 witness's exhibits CMF-1 through CMF-13, which are
4 Exhibits 14 through 26 on staff's comprehensive
5 exhibit list.

6 CHAIRMAN BRISE: Okay. So we'll move in
7 Exhibits 14 through 26, if there are no
8 objections.

9 (No response.)

10 CHAIRMAN BRISE: And I'm not seeing or
11 hearing any, so we will move those exhibits into
12 the record.

13 (Exhibit Nos. 14 through 26 admitted into the
14 record.)

15 MR. REHWINKEL: Public Counsel would move
16 Exhibits 97 through 102, Mr. Chairman.

17 CHAIRMAN BRISE: Okay. So at this time, if
18 there are no objections, we will move Exhibits 97
19 through 102 into the record.

20 (No response.)

21 CHAIRMAN BRISE: And I think that those were
22 all of the exhibits.

23 (Exhibit Nos. 97 through 102 admitted into
24 the record.)

25 CHAIRMAN BRISE: Okay. Anything else for

1 this witness?

2 MR. ANDERSON: No. May he be excused?

3 CHAIRMAN BRISE: Sure. Mr. Fallon, you may
4 be excused. Thank you for your testimony.

5 THE WITNESS: Thank you.

6 CHAIRMAN BRISE: All right. At this time,
7 I'll ask staff to go over the important dates.

8 MR. YOUNG: Yes. Hearing transcripts are
9 daily. Briefs are due on August the 18th, 2014.
10 Staff recommendation is scheduled to be filed on
11 September 22nd, 2014 for a special agenda on
12 October the 2nd, 2014.

13 CHAIRMAN BRISE: All right. Thank you.

14 Are there any other things that need to be
15 addressed?

16 MR. MOYLE: I'm sorry, I didn't hear when you
17 said the transcripts would be due.

18 MR. YOUNG: It's daily, daily transcripts, so
19 tomorrow.

20 MR. MOYLE: Thank you.

21 CHAIRMAN BRISE: All right. Are there any
22 other matters that need to be addressed?

23 (No response.)

24 CHAIRMAN BRISE: Okay. Seeing that there's
25 none, staff, is there anything else that we need

1 to address?

2 MR. YOUNG: I think Mr. Rehwinkel -- just
3 some housekeeping matters -- Mr. Rehwinkel will
4 collect the confidential documents. Staff is
5 going to collect the confidential documents of
6 Mr. Fallon. And I think with that, that is it.

7 CHAIRMAN BRISE: All right.

8 MR. REHWINKEL: Just one thing. To the
9 extent parties who are all, as I understand it,
10 since David is not here, entitled to view the
11 confidential information, I think it would be
12 appropriate if they want to retain a single copy
13 of each confidential exhibit, I think that would
14 be up to them if they want to.

15 MR. ANDERSON: We have no objection to the
16 parties who are signatories to the confidentiality
17 agreement retaining the confident documents.

18 CHAIRMAN BRISE: Okay. All right. That is
19 not a problem for me.

20 So I think that that manages all of the
21 business that we have before us today. With that,
22 I would thank you for allowing us to run an
23 expeditious hearing. So with that, we stand
24 adjourned.

25 (Whereupon, proceedings were concluded at

140009-EI

1 6:30 p.m.)

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CERTIFICATE OF REPORTER

STATE OF FLORIDA)
COUNTY OF LEON)

I, MICHELLE SUBIA, Registered Professional Reporter, certify that the foregoing proceedings were taken before me at the time and place therein designated; that my shorthand notes were thereafter translated under my supervision; and the foregoing pages, numbered 469 through 636, are a true and correct record of the aforesaid 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 5th day of August, 2014.



MICHELLE SUBIA, RPR
NOTARY PUBLIC
COMMISSION #FF127508
EXPIRES JUNE 7, 2018