BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Nuclear Cost Recovery Clause.	DOCKET NO.: 140009-EI FILED: August 18, 2014

JOINT INTERVENORS' POST-HEARING STATEMENT OF POSITIONS AND POST-HEARING BRIEF (DUKE ENERGY FLORIDA)

Pursuant to Order No. PSC-14-0384-PHO-EI, issued July 24, 2014, the Office of Public Counsel ("OPC"), the Florida Retail Federation ("FRF"), the Florida Industrial Power Users Group ("FIPUG"), and White Springs Agricultural Chemicals, Inc. d/b/a PCS Phosphate ("White Springs") (Joint Intervenors) hereby submit this Post-Hearing Statement of Positions and Post-Hearing Brief on the disputed issues pertaining to Duke Energy Florida ("DEF").

PRELIMINARY STATEMENT

In March 2012, the Commission issued Order No. PSC-12-0104-FOF-EI which approved a stipulation and settlement agreement among DEF and the Joint Intervenors. In November 2013, in Order No. PSC-13-0598-FOF-EI, the Commission approved the Revised and Restated Stipulation and Settlement Agreement ("RRSSA" or "Revised Agreement") among Duke and the Joint Intervenors.

With respect to the Levy Nuclear project ("LNP"), the Revised Agreement specified a fixed cost recovery factor that will apply to the 2015 Nuclear Cost Recovery Clause ("NCRC") factor for some or all of that year based on the remaining LNP costs previously estimated by Duke. The suits (and counter-suits) initiated earlier this year between Duke and Westinghouse Electric Company ("WEC") concerning Duke's termination of the engineering, procurement and construction contract ("EPC") for LNP, however, have materially complicated Duke's

efforts to extricate itself from the EPC that it signed with the WEC-Shaw Stone & Webster consortium for LNP at the end of 2008. The complications include:

- The disposition of long lead time equipment ordered and fabricated for Levy for which DEF customers have already paid for through the LNP portion of the NCRC factor charges;
- In excess of $54 million in payments that Duke made to WEC for work that was never actually begun; and
- WEC's claim that it performed nearly $500 million in general engineering, licensing and support activities for the AP1000 reactor that are properly billed to Duke.

The Intervenors have raised two specific issues at this time for the purpose of the nuclear cost recovery clause. The most significant one is related to $54,127,100 in Duke payments to WEC for long lead time equipment ("LLE") for which Duke has sought a refund because WEC never initiated manufacture of the LLE and because Duke terminated the Levy EPC contract effective January 28, 2014. Duke has sued WEC in federal court seeking a return of the $54 million. Because the $54 million, plus carrying charges, has been recovered from Duke customers through the NCRC, that amount should be credited to consumers now that Duke confirmed that those costs will never actually be incurred for the Levy project. The customers are entitled to receive their $54 million back in the form of a mid-2015 termination of the current LNP portion of the cost recovery charge.

Second, with respect to the six LLE components for which Duke's customers have paid approximately $200 million, the Intervenors ask the Commission to impose conditions to safeguard the value of these assets for the benefit of the consumers. Pursuant to Paragraph 12.c of the RRSSA, Duke has an obligation to use "reasonable and prudent efforts to sell or otherwise salvage LNP assets, or otherwise refund any costs that can be captured for the benefit of

customers." Duke, however, is contractually obligated under the EPC to work with WEC to dispose of LLE. Duke also needs WEC's intellectual property rights to achieve the Combined Construction and Operating License ("COL") which is the responsibility of Duke shareholders pursuant to the terms of the RRSSA. Consequently, Duke and WEC are embroiled in litigation in federal court over the termination of the Levy EPC while simultaneously pursuing other ongoing, mutually beneficial commercial interests unrelated to the NCRC or the interests of Florida customers, such as the development of the Lee nuclear plant in South Carolina. T. 621. In fact, in this regard, Duke shareholder and Florida consumer interests are not aligned at all, which is why affirmative action by the Commission is required. Final resolutions or a settlement of these related matters that compromises the value of the LLE or the demand for repayment of the $54 million is foreseeable, if not probable. Based on the record developed in this proceeding, the Intervenors ask the Commission to protect customers and adopt a rebuttable presumption that any disposition of LLE equipment to WEC should reflect the original cost of those items charged to Duke's consumers. The Commission should further require Duke to seek and obtain advance Commission approval for any final action to dispose of any and all remaining LLE.

The Joint Intervenors have all taken consistent positions in this hearing on the disputed issues in the Duke LNP portion of the docket. Except for Issues 4 and 5 and that portion of Issue 9 that relates to LNP, the OPC, FIPUG, FRF and White Springs each maintains the position shown in the Prehearing Order.

POSITIONS AND ARGUMENT ON DISPUTED ISSUES

Issue 4: What action, if any, should the Commission take in the 2014 hearing cycle with respect to the $54,127,100 in Long Lead Equipment milestone payments, previously recovered from customers through the NCRC, which were in payment for Turbine Generators and Reactor Vessel Internals that were never manufactured?

Intervenors: *The Commission should direct Duke to recognize a credit in favor of Duke's customers for $54,127,100 in Schedule TGF-4, effective January 28, 2014, to reflect Duke's position taken in a federal lawsuit that it used that amount of customer-provided funds to pay Westinghouse Electric Company (WEC) for the manufacture of equipment which never occurred. The Commission has authority and jurisdiction over these dollars and its order directing the credit is both necessary under the nuclear cost recovery rule and appropriately signals to Duke that it is the utility's responsibility to retrieve these funds for its customers. Intervenors request that the Commission direct Duke to cease collecting the LNP portion of the NCRC charge in mid-2015 as dictated by the fallout of recording the assumed refund on January 28, 2014.*

ARGUMENT

This issue for the Commission is compellingly simple. It involves correcting the customers' side of the ledger in the NCRC for two significant payments that Duke made to WEC for work that Duke subsequently cancelled and WEC never performed. The Commission previously approved the payments because, as long as the Levy work was suspended rather than cancelled, it expected that the work eventually would be done. When Duke terminated the Levy Nuclear Project EPC contract, it finally became apparent that the fabrication work would never be performed, and a credit of the amount previously charged to consumers became due. The Commission has all the facts it needs, and none of the relevant facts are in dispute. It has both the obligation to correct nuclear cost recovery to account for this known change, and the authority to order the refund to be recognized as of January 28, 2014. The LNP charge should

cease in mid-2015 as a result. The evidence at hearing demonstrated that Duke customers have paid approximately $320 million for LLE through the NCRC. T. 613. These payments and associated carrying costs will be substantially charged to Duke's customers by December 31, 2015. T. 439. The costs include milestone payments made under the EPC contract and negotiated fees for the dispositioning of the LLE to maximize or preserve the value of the equipment. Of the 14 original LLE components, six are tangible items owned by Duke (and paid for by customers). T. 559. Five no longer exist as LLE because Duke entered into settlements that terminated Duke's (and the customers') obligations and rights to the items. T. 567-568.

Three LLE components were never started. The manufacture of one of those three was terminated before it ever begun, with no payments made and consequently no obligation to Duke or its customers. T. 569-570. Similarly, the remaining two LLE components (Reactor Vessel Internals ("RVI") and Turbine Generators ("T/G")) – which are central to the refund claim in this case – were – also never manufactured. T. 572-573. Years ago, Duke submitted for Commission approval to collect, through the NCRC from its customers the $54 million in RVI and T/G payments made to WEC for that equipment. T. 440-442. As a consequence, the Commission approved payments for those items in 2009 as having been prudently incurred, and included those amounts in the five-year deferred recovery program called the "Rate Mitigation Plan" ("RMP") that was approved in that year. The dollars associated with the RMP will be fully recovered, along with the RVI and T/G payments (carrying costs included) from customers on December 31, 2014. T. 418-419, 445-446, 448. Duke witness Foster testified that, under the 2012 and 2013 settlements approved in Order Nos. PSC-12-0104-FOF-EI and PSC-13-0598-FOF-EI, customers pay a levelized monthly fee based on $3.45/1,000 kWh (residential) that was designed to recover the "best estimate" of remaining LNP costs, including the then remaining

RMP cost (including carrying costs), and that best estimate from Duke was intended to recover all known LNP costs. T. 444-445.

In December 2013, Duke wrote to WEC and demanded repayment of the $54 million because the components were never manufactured and no material was ever ordered. EX 19, pp 70,73; T.571-574. At that time, Duke knew it was going to cancel the EPC for cause because the COL would not be received by January 1, 2014. Order No. PSC-13-0598, at 30. Duke further cited EPC provisions to WEC noting that there were no termination costs associated with the two LLE items that were the subject of the now-erroneous payments for which it demanded repayment.[1] T. 574-575. Duke witness Fallon agreed that earlier in 2013, WEC initially acknowledged that the refund was owed, but WEC's willingness to provide the refund disappeared as litigation over the unrelated termination costs loomed. T. 591-592; EX 99. On January 28, 2014 Duke cancelled the EPC. On March 28, 2014 Duke sued WEC in federal court in North Carolina demanding that the $54 million be repaid. T. 579-581; EX 97. Duke has acknowledged that the customers have now paid for 100% of the $54 million plus all related carrying costs and deferred tax costs. T. 418-419, 445-446, 448.

The Commission has previously asserted jurisdiction over the LLE payments because it already found the $54 million payment prudent (assumedly, because, as "preconstruction costs," it was intended to result in the ***actual manufacture*** of these LLE prior to construction of the nuclear plant), and the Commission has continuing jurisdiction because Duke has already collected the money from its customers based on the asserted expectation that the equipment would be manufactured. See Order No. PSC-09-0783-FOF-EI, at 35-37 (approving 2009 preconstruction costs in the amount of $291.9 million as reasonable; deferred recovery over

[1] The Commission can review Confidential Exhibit 19, page 73 in the "WEC Assessment" and "DEF Response" columns and judge for itself the level of true disagreement – if any – that may have existed between Duke and WEC relating to the refund obligation itself.

maximum of 5 years) and Order No. PSC-11-0095-FOF-EI, at 43 (approving all 2009 final costs as prudent).[2]

Duke's demand to WEC for the return of the payment, and Duke's suit against WEC in federal court for the payment's return are admissions by Duke that, with its termination of the EPC agreement earlier this year, those costs are not eligible for NCRC recovery. Section 366.93, F.S., and Commission Rule 25-6.0423 F.A.C., do not authorize the recovery of costs for which no work is performed.[3] The provisions of Section 403.519 (4)(e), F.S. and Rule 25-6.0423(6)(a)(3), F.A.C., do not apply to this circumstance because Duke has admitted that, in cancelling the EPC, the $54 million in payments relates to work that never was and never will be performed, and it would now be imprudent, for the purposes of the NCRC, to continue to engage in the fiction that this $54 million sum relates to recoverable costs. By suing WEC for return of the funds, Duke has effectively withdrawn the basis for the original prudence determination. Furthermore, Duke has now admitted that the costs were not actually "incurred" since they have sought a refund under the EPC, based on the undisputed facts that no work occurred nor were any materials for manufacture of these LLE components ever ordered. These undisputed facts

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[2] From a prudence perspective, the Commission initially approved clause recovery on the basis that the $54 million related to qualified "pre-construction costs" for necessary equipment based on a cost estimate that appeared reasonable. The Commission certainly did not approve as prudent $54 million for work that Duke cancelled and would not be performed at all.

[3] Section 403.519 (4)(e)F.S. provides:

> (e) After a petition for determination of need for a nuclear or integrated gasification combined cycle power plant has been granted, the right of a utility to recover any costs incurred prior to commercial operation, including, but not limited to, costs associated with the siting, design, licensing, or construction of the plant and new, expanded, or relocated electrical transmission lines or facilities of any size that are necessary to serve the nuclear power plant, shall not be subject to challenge unless and only to the extent the commission finds, based on a preponderance of the evidence adduced at a hearing before the commission under s. 120.57, that certain costs were imprudently incurred.

Rule 25-6.0423(6)(a)(3) provides:

> 3. Upon a determination of prudence, prior year actual costs associated with power plant construction subject to the annual proceeding shall not be subject to disallowance or further prudence review.

and Duke's admissions require immediate accounting and ratemaking recognition in the NCRC of the demanded repayment to the benefit of customers, as of the date of the cancellation of the EPC contract.

Duke incorrectly seeks to tacitly equate the circumstances of the $54 million in payment for non-existent LLE to the parallel WEC claim for $482 million in termination costs. T. 512; Order No. PSC-14-0384-PHO-EI, at 23 (Duke position on Issue 4). Although each relates to the EPC contract, the two items could not be more distinct as applied to the NCRC. As a matter of simple logic, the Commission must ignore the WEC claim and refrain from accepting the implication put forth by Duke that it should treat the $54 million refund and the $482 million WEC claim as just two sides of the same coin. The WEC claim in no way stands on equal footing with the robustness of the $54 million payment. As noted above, the $54 million in payments made for cancelled LLE items was presented and previously approved for NCRC recovery by the Commission. All pertinent facts relating to the cancellation of those items and Duke's admission that none of the work on those items was performed are uncontroverted facts. No further fact finding is required and the $54 million should be returned to the ratepayers.

On the other hand, Duke has admitted that it has never recognized the newly asserted WEC costs under the EPC contract. T.472; 594-595; EX 100. Duke concedes that they have vigorously denied that they owe any part of the amounts that WEC seeks in its suit. T. 512,601. More importantly, Duke admits that it never considered those costs in determining termination obligations under the contract and that it never presented the costs that make up the $482 million WEC claim to the Commission for consideration or approval as being reasonable or prudent. T. 593-595. Duke also concedes that it has never submitted the costs included in the $482 million for cost recovery under the NCRC T. 472, 595. In short, the Commission has absolutely no facts

relating to the costs alleged by WEC in its lawsuit in this record, or any prior Duke NCRC filing. Obviously, no elements of the new WEC claims have been presented in any NCRC filing for Commission review, nor should they. These admissions by Duke casts the WEC costs "claim" in the faintest of light in comparison to the uncontroverted status of the $54 million LLE payments for which the customers have paid and which the Commission has thoroughly reviewed.

Aside from serving as an admission against Duke's interest in the position it otherwise seeks to advance in this hearing to resist giving the customers their money back, it is of no particular consequence that Duke's demand for a refund is the subject of pending litigation where Duke may or may not eventually prove to be successful in recovering the amounts paid for the suspended and cancelled work. The utility may or may not settle its various claims with WEC in a manner that would resolve Duke's demand for a $54.1 million refund as part of a broader settlement. Regardless, it would be facially imprudent and unreasonable for Duke to fail to recover amounts paid to WEC for work that WEC admits it did not perform. For purposes of Duke's NCRC charges, and as fully sufficient support for the consumers' request for an immediate credit of the $54 million, it is sufficient that Duke admits that, under the terms of the EPC contract, those dollars are not properly chargeable by WEC and must be returned.

Another reason to resist giving equal status to the two claims is that, as a matter of law, Duke has foreclosed any NCRC recovery of the $482 million even if they receive an adverse judgment from a federal court. Having admitted it was never aware of these costs or of any obligation under the EPC to pay them, Duke cannot later ask the Commission to approve the $482 million (or any portion thereof) as prudent. For this reason alone, the Commission should not "wait and see" how the North Carolina Federal court litigation is resolved.

Duke's admissions in its federal court claims – one asserting the basis for the refund of the $54 million, and the other denying any knowledge of the costs asserted in WEC's suit, and denying any obligation to pay them, provide ample basis for a Commission order directing that the refund be given immediate accounting and ratemaking recognition now. Moreover, the only plausible reason for postponing the implementation of a refund-credit through the NCRC is to ascertain whether and to what extent Duke eventually is successful in recovering the $54 million from WEC. Given the admissions noted above, however, the passage of time will not alter the operative facts that ratepayers erroneously paid for work (in addition to millions of dollars more in carrying costs) that was never performed, and ratepayers are not obliged under the nuclear cost recovery rule to insure Duke's litigation risk in a contract dispute.

Duke's federal court claim for a refund of the $54 million LLE payment, the cost of which Duke induced the Commission to impose on customers in 2009 and now vigorously asks the federal court to order repaid, must be treated as a credit in 2014 and returned to the customers via cessation by – mid-year 2015 – of the LNP portion of the NCRC charge. This action is required because the Commission has already evaluated and considered these costs for prudence and recovery and that approval and recovery turned out to be in error since Duke has now recanted the basis for the original recovery. Since, at the time of initial Commission review in 2009, it would have been presumptively imprudent to charge Duke customers for work billed by WEC that was not actually performed, the admission in 2014 that the work was not performed and Duke's demand for repayment are *prima facie* evidence of imprudence (or at a minimum NCRC clause-ineligibility) that requires immediate refund to customers. Reversal in the form of a January 2014 credit should be automatic.

Specifically, the Intervenors ask the Commission to direct Duke to record, effective January 28, 2014, a credit in the amount of $54,127,100 in the ongoing LNP cost accounting as reflected in Schedule TGF-4. This credit should be recorded as if received in cash with flow-through in the Schedules TGF-4 for the balance of 2014 and 2015 as a reduction in cost recovery in the same rate-reducing manner (as discussed below) that the $328 million disputed NEIL insurance payment was recorded in 2013. T. 460-461. See discussion below. Duke witness Foster testified that if the refund claim is recorded in this manner an over-recovery of between $40-50 million would occur if recovery continued at the levelized, rate stipulated per the RRSSA. T. 458-459.

The Commission has ample precedent from the 2012 Fuel Adjustment Clause hearing to order the ratemaking credit the customers seek in this proceeding. Nuclear Electric Insurance Limited ("NEIL") refused to pay the full $490 million replacement power limits of the CR3 delamination outage insurance claim, instead only paying $162 million. Order No. PSC-12-0664-FOF-EI, at 5. In the 2011 Fuel Adjustment Clause Hearing, the Commission allowed Duke to recover replacement power costs caused by the extended outage of the damaged Crystal River Unit No. 3 ("CR3") in 2012, in the amount of $140 million. Order No. PSC-11-0579-FOF-EI, at 11-12. In 2012, Duke agreed to credit the Fuel Clause – as an offset to the higher replacement power costs – with the balance ($328 million) of the full (single event) replacement power policy limits even though NEIL was refusing to pay the balance of the claim above $162 million that NEIL had already paid. Order No. PSC-13-0598-FOF-EI, at 26. As reflected in the RRSSA, Duke did not receive the $328 million from NEIL until they settled with the insurer in 2013, and did not debit the fuel clause until 2014 to collect the $328 million Order No. PSC-13-0598-FOF-EI, at 2, 9, 26. Thus, the 2012 Fuel order provides a basis for the Commission to direct Duke to

record – as if received – the claimed, but refused, over-payment refund in the NCRC similar to the manner in which the claimed, but refused, replacement power cost policy insurance reimbursement was credited well in advance of the ultimate receipt of the previously disputed payment from NEIL in the Fuel Adjustment Clause. There is no substantive difference between the two situations. When Duke received the disputed insurance payment after litigation/settlement, the shareholders who advanced the funds were (by settlement instead of through a hearing) reimbursed from what would have otherwise been customer proceeds. Order No. PSC-12-0104-FOF-EI, at 11-12. Likewise, if Duke fails to pursue the refund claim or otherwise fails to collect, it can elect to come back before the Commission and demonstrate why customers should nevertheless be billed for a manufacturing activity that never occurred.

In taking this step to effectuate the credit for $54M payment in January 2014, the Commission would further ensure the customers that, given Duke's assertions and verified claims in federal court, this refund is expected and should not be compromised in litigation with WEC and will make clear that DEF's consumers are not mere insurers of whatever outcome, litigated or settled, that may eventually transpire.

Further, from a regulatory policy perspective, ordering the corrective action sought by Intervenors is (1) consistent with the nuclear cost statute and rule; (2) largely mitigates a potential inter-generational equity issue (by crediting the NCRC to the consumers that are paying the $350 million Levy remaining project costs); and (3) prevents Duke from discounting the value of that refund to consumers in its on-going discussions with WEC.

Issue 5: What restrictions, if any, should the Commission place at this time on Duke's attempts to dispose of Long Lead Equipment?

Intervenors: *The Commission should require Duke to take the necessary time and expend all necessary effort to cost-effectively dispose of LLE for the maximum benefit of customers. As part of implementing this requirement, the Commission should adopt a rebuttable presumption that any disposition of LNP LLE to WEC should reflect the original cost of those items charged to Duke consumers. Additionally, Duke should not compromise the value of LLE assets for the benefit of Duke's shareholders*

ARGUMENT

At this time, the record on Duke's actions related to the disposal of LLE is incomplete. The Commission heard testimony by Duke witness Fallon that a bid event for the six LLE components is still underway. T. 565. The Commission also received uncontroverted evidence that Duke had earlier determined that five of the remaining six LLE components had a high likelihood of resale to a new AP 1000 projects. T. 558-559, 588-590. The likelihood of resale for the Reactor Coolant Pumps was judged to be "medium." T. 590. This information is consistent with that given to the Commission by Mr. Fallon's predecessor John Elnitsky in 2010. EX 101. The Commission further heard evidence that there are as many as 27 new AP 1000 projects (EX 102) on the drawing board in addition to the ones that were discussed in the confidential Exhibit of Mr. Fallon (EX 19) at pages 85-96; 104-112. Despite this, no LLE compenents have been sold. T. 565. Unfortunately, the necessary role of WEC in facilitating the LLE disposal and the litigation that WEC has instigated against Duke appears to have potentially paralyzed Duke's efforts to resell the LLE. T. 606-608; EX 99.

Customers paid approximately $200 million for the six remaining marketable LLE components. T. 562. At a time when Duke and WEC were in a non-litigation mode the prospects for resale were deemed very good. T. 588-590; EX 101. Now, given WEC's current stance and

Duke's need to acquire non-revocable intellectual property from WEC to continue the shareholders efforts to acquire the COL, a stand-off of sorts persists. When given a chance, even Mr. Fallon did not deny that WEC's motivations to cooperate with selling the LLE had changed after it became clear that the EPC Contract had been or was going to be cancelled. T. 601-602. Mr. Fallon testified that WEC was not cooperating or being helpful in efforts to sell the LLE. T. 629-630.

These circumstances call for the Commission's special attention. The customers have paid dearly for a disastrous result that has produced exactly nothing of benefit to anyone but Duke's shareholders and the vendors. With approximately $1 billion drained from ratepayer bank accounts, the only glimmers of hope remaining for Duke customers is a $54 million refund coming their way thanks to Duke's efforts to get those funds back and a maximum of $200 million in LLE resale value that Duke has committed to maximize in the RRSSA (paragraph 11.c). Duke admits that it has at least one ongoing master services agreement arrangement with WEC and that agreement applies to other Duke nuclear units outside Florida. T. 604-606, 629. Of course Duke is also heavily dependent upon WEC to assist it in its pursuit of the Levy COL. T. 607-610. Therefore the Customers ask that the Commission take pains to express to Duke that it expects the Company to aggressively pursue the sale of the LLE in a manner that considers only the interests of the customers and not those of Duke's shareholders or the ongoing business relationship between Duke and WEC on projects unrelated to the portion of the LNP that is directly the customers' responsibility (i.e. the COL). Duke should be admonished not to seek to reach a compromise with WEC that involves the use of the LLE or a compromise of the $54 million claim without prior notification to the Commission or to the intervenor parties to this docket who are also signatories to the RRSSA (i.e. the Joint

Intervenors). In particular, the Commission should adopt a rebuttable presumption that any disposition of LNP Levy LLE equipment to WEC should reflect the original cost of those items charged to Duke consumers. The Commission should further require Duke to seek advance Commission approval for any final action to dispose of the remaining LLE.

Issue 9: What is the total jurisdictional amount to be included in establishing DEF's 2015 Capacity Cost Recovery Clause Factor?

Intervenors: *The Commission should approve the amounts resulting from the Revised and Restated Stipulation and Settlement Agreement (RRSSA). For the LNP project, the customer impact is fixed at the $3.45/month residential impact (with corresponding customer impacts as shown in Exhibit 5 to the RRSSA) and order the mid-year 2015 cessation of the LNP NCRC charge. This includes the requirement that the charge cease once LNP costs have been recovered, subject to any allowable true-up. [The CR3 portion of the position statement remains as stated in the Prehearing Order by the individual parties].*

ARGUMENT

The Commission should apply the provisions of the RRSSA that require the levelized charge based on the recovery of the estimated $350 million described in paragraphs 11 and 12 of the RRSSA. As the evidence demonstrated, after taking into consideration the $54 million overcharge for the LLE components that were never manufactured, all known costs of the LNP project will be fully recovered during, but well before, the end of 2015. Duke witness Foster testified that, under an assumed set of facts, if the overpayment were to be accounted for as a refund, it could reduce the remaining balance on December 31, 2015 from a positive (unrecovered) $6.1 million to a negative (over-recovery) balance of between $40 and $50 million. T. 449-450, 459. Mr. Foster also testified that the company had not identified any additional costs that were sufficiently known at this time to be included in any true-up or further

claim for recovery. T. 433.

Paragraph 11 of the RRSSA states that with respect to the $3.45:

> This factor shall be fixed at the levels shown on Exhibit 5, as amended by Exhibit 9, until the estimated remaining LNP component balance of approximately $350 million (retail) as estimated in the 2012 Settlement Agreement, and carrying costs, is recovered (estimated to be 5 years) with the true up occurring in the final year of recovery, in accordance with Paragraph 12 below.
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Paragraph 12.c. further provides in relevant part that:

> The LNP cost recovery charge component of DEF's NCRC charges, established in paragraph 11 of the Revised and Restated Settlement Agreement, shall terminate upon the earlier of full recovery of DEF's LNP costs, or the first billing cycle for January 2018, except for any true-up. By no later than May 1, 2017, DEF shall submit a final true-up filing to the PSC setting forth the final actual LNP costs, and the amount of any true-up cost or credit to customer bills. To the extent full recovery of all LNP costs is achieved prior to 2017, DEF will file the final true-up in the applicable period. The final true-up amount will be recovered or refunded to customers in the following year through the NCRC. DEF shall be permitted to recover all costs associated with the termination of the LNP, including, but not limited to the LNP EPC agreement, through the NCRC, consistent with the provisions of Florida statute section 366.93(6), F.S., and Commission Rule 25-6.0423(6), F.A.C., except as otherwise provided in this Revised and Restated Settlement Agreement.
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Order No. PSC-0598-FOF-EI, at 29, 31-32.

The factual situation presented by the faster than expected recovery of the estimated costs may be somewhat different than contemplated by the RRSSA. Nevertheless, the Commission can take action to adjust customers' bills in a manner that is entirely consistent with the RRSSA.

Based on the evidence adduced at hearing, if the Commission orders Duke to record the $54 million refund claim (as if received from WEC), the known LNP costs covered by the estimated $350 million will be fully recovered in 2015. T. 459. Under the RRSSA, this means

that the $3.45 charge must terminate. If the Commission allows the current LNP charge to continue while resolution of the federal lawsuit awaits years of litigation and appeals, the Commission will be allowing Duke to recover $100 million on an annual, ongoing basis for costs that have not been approved by the Commission. Terminating the $3.45 sometime during 2015, based on the known, Commission-reviewed and Commission-approved costs and taking into consideration the 2015 impact of Duke's $54 million refund claim, will avoid this unfair result while not precluding Duke from asking the Commission to establish or re-establish a charge (or credit) for any final true-up. In fact, the RRSSA contemplates that the true-up rate will be different from the $3.45. Given that there are no true-up costs known to the Company or the Commission or present in the record in this proceeding, the Commission should order Duke to provide an estimate of the recovery of all costs presented in the TGF-4 schedules including the $54 million refund as of January 28, 2014, to be filed in this docket for staff's administrative verification. Duke should propose the proper billing cycle for termination of the $3.45 in 2015 and file corresponding tariffs. Any under- or over-recovery attributable to the estimate so provided would, by the terms of the RRSSA, be recoverable in the final true-up, if any is needed.

CONCLUSION

Joint Intervenors request that: (1) the Commission direct Duke to record a credit of $54,127,100 as a refund in January 2014 in schedule TGF-4 and to reflect the impact of the refund for determining the duration of the $3.45 LNP component of the NCRC factor; (2) Duke should file updated schedules and tariffs for staff verification showing the resulting date of termination of the LNP charge; and (3) the Commission should adopt a rebuttable presumption that any disposition of the LLE to WEC should reflect the original cost of those items charged to

Duke consumers and further require Duke to seek advance Commission approval for any final action to dispose of the remaining LLE.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by electronic mail on this 18th day of August, 2014, to the following:

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