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BEFORE THE  
FLORIDA PUBLIC SERVICE COMMISSION

In the Matter of:

DOCKET NO. 140113-EI

PETITION FOR APPROVAL TO CONSTRUCT AN INDEPENDENT  
SPENT FUEL STORAGE INSTALLATION AND AN ACCOUNTING  
ORDER TO DEFER AMORTIZATION PENDING RECOVERY FROM  
THE DEPARTMENT OF ENERGY, BY DUKE ENERGY FLORIDA,  
INC.

-----  
PROCEEDINGS: COMMISSION CONFERENCE AGENDA  
ITEM NO. 13

COMMISSIONERS  
PARTICIPATING: CHAIRMAN ART GRAHAM  
COMMISSIONER LISA POLAK EDGAR  
COMMISSIONER RONALD A. BRISÉ  
COMMISSIONER EDUARDO E. BALBIS  
COMMISSIONER JULIE I. BROWN

DATE: Thursday, December 18, 2014

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

REPORTED BY: DEBRA R. KRICK  
Court Reporter and  
Notary Public in and for  
State of Florida at Large

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

2 CHAIRMAN GRAHAM: So now we are going to Item  
3 Number 13. Okay. Staff, Item Number 13.

4 MS. MATTHEWS: Good morning, Commissioners, I  
5 am Traci Matthews with staff.

6 Item 13 is Duke's petition -- Duke Energy  
7 Florida's petition. The petition is asking for two  
8 things. In the 2013 settlement agreement for the  
9 Crystal River Unit 3 nuclear generating unit, it  
10 was contemplated that Duke would construct and  
11 recover the cost to build what was termed in the  
12 agreement dry cast storage.

13 In this petition, Duke is asking the  
14 Commission to find that the dry cast storage, or  
15 what is now being called the independent spent fuel  
16 storage installation is, in fact, the proper method  
17 to store the spent nuclear fuel from the CR3 unit.

18 In addition Duke is requesting approval from  
19 an accounting order to defer the amortization of  
20 the ISFSI cost, which is a part of the CR3  
21 regulatory asset established in the 2013 settlement  
22 agreement, until all recovery's can be made from  
23 its litigation against the U.S. Department of  
24 Energy for partial breach of its contractual  
25 obligations to pick up and store the spent nuclear

1 fuel at a federal repository.

2 Staff recommends that the ISFSI is the most  
3 cost-effective method for storing spent fuel, and  
4 that the accounting order requested by Duke is  
5 appropriate because it will lessen the impact on  
6 the rates for Duke's customers, so staff is it  
7 recommending the petition to be approved.

8 CHAIRMAN GRAHAM: Okay. I was told that we  
9 pulled this because Mr. Moyle had something he  
10 wanted to say.

11 MR. MOYLE: That's true. I think OPC does as  
12 well, and I would defer to them if I could.

13 CHAIRMAN GRAHAM: OPC.

14 MR. SAYLER: Thank you, Mr. Chairman, OPC.

15 We just wanted to note our reservation of  
16 rights for the record. It's OPC's understanding,  
17 and we believe staff has correctly included it on  
18 page six of that recommendation, there is going to  
19 be a future point of entry regarding costs and the  
20 prudence of those costs, so we just wanted to note  
21 for the record we reserve the right to do so in the  
22 future. That's all.

23 Thank you.

24 CHAIRMAN GRAHAM: Okay.

25 MR. MOYLE: John Moyle on behalf of the

1 Florida Industrial Power Users Group, and we do  
2 have a few things that we would like to say and  
3 bring before you today, but I would be remiss not  
4 start with a thank you, Mr. Chairman, on behalf of  
5 the whole Moyle family for the order that you just  
6 entered deferring the briefing until January 1st,  
7 so thank you for that.

8 Likewise, FIPUG would reserve its rights as  
9 articulated by the Office of Public Counsel, and we  
10 did want to just spend a minute, that PAA item. It  
11 hasn't gone to hearing. But it's a significant  
12 issue because you are being asked to approve, in  
13 effect, a methodology that would result in the  
14 long-term storage of spent nuclear fuel rods at the  
15 Crystal River site.

16 And it's interesting, in the nuclear  
17 vernacular that something that is between 30 and 60  
18 years is viewed as short-term or intermediate, and  
19 in just about every other context, those timeframes  
20 are pretty lengthy and pretty long-term. But we  
21 wanted to make two points with respect to what is  
22 before you today.

23 One is that the way these costs are, in  
24 effect, being booked and being paid, as FIPUG  
25 understands it, it's kind of the equivalent to an

1 interest only loan on a house in that the customers  
2 are only going to be paying the carrying charges to  
3 Duke for a long period of time. And I think those  
4 carrying charges AFUDC, and I think a return, they  
5 get a return on this, but there is no amortization.  
6 You don't start paying down the principle for a  
7 very long period of time. And the trigger for when  
8 you start amortizing this, as FIPUG read the  
9 petition, is it's triggered upon the conclusion of  
10 some federal litigation.

11 And in the petition, on page five, it talks  
12 about costs incurred to date in proposed regulatory  
13 treatment, and says, given the time involved in  
14 other court cases against the DOE for previously  
15 incurred damages, it is reasonable to assume that  
16 if the final case is filed in 2018, it will not be  
17 fully resolved until 2021 at the earliest. And  
18 then it goes on to say, this date could change  
19 because it's outside the Commission's control.

20 Litigation takes a long time. So in the  
21 petition, the way we read it is it says, you are  
22 going to be paying interest only until litigation  
23 gets resolved, which looks like it's 2021 at the  
24 earliest. We think that there ought to be the  
25 ability to come back and look at this, not have it

1 tied to federal litigation, which is not really  
2 tied down, but to have the ability to come back and  
3 look at it, say, two years after the settlement  
4 wraps up. The settlement wraps up in '17, but to  
5 bring this matter back for a status report, or an  
6 update, say, in 2019, maybe again in 2021, because,  
7 you know, if you were looking at it in the context  
8 of a personal business decision, I don't know that  
9 people would be real comfortable having interest  
10 only loans that go on for that amount of time.

11 So we wanted to bring that point. I have  
12 discussed it with Duke and staff a little bit, and  
13 I think, you know, it's been given some thought  
14 to -- and again, this is a PAA, but that's the one  
15 point we wanted to bring up.

16 And then the second point is a little broader,  
17 but I think it's worth making, because as I have  
18 suggested, what you are being asked to do is --  
19 right now the spent nuclear fuel rods are stored in  
20 pools at Crystal River, and, you know, this is not  
21 an easy thing to handle. It has a lot of risk  
22 associated with it. And the federal policy, as I  
23 understood it, was to try to say, let's take all of  
24 this very hot material that needs to have 24-hour  
25 security and aggregate it, consolidate it and find

1 a place that we can put it.

2 That federal policy has not really moved  
3 forward quickly. There has been a lot of  
4 discussion about it, but it's almost by default  
5 that there is a policy that's in place, which is we  
6 are having these nuclear spent fuel rod storage  
7 facilities cropping up at every nuclear facility.  
8 So in Florida, there is the Crystal River, there is  
9 the Turkey Point and there is the St. Lucie, you  
10 know, three, in effect, nuclear disposal facilities  
11 in Florida. We don't think that's a good policy  
12 for ratepayers, because you are going to have to  
13 have security at these three places.

14 So what we want to make the point is, is that  
15 we are fortunate in Florida to have a number of  
16 investor-owned utilities, two of them are very  
17 significant players nationally. You know, I think  
18 Duke is the largest investor-owned utility  
19 nationally. NextEra has the regulated subsidiary,  
20 Florida Power & Light, which has two nuclear  
21 plants. I think they also have a nuclear facility  
22 in New Hampshire and one in Iowa.

23 We would encourage you to encourage them to  
24 take an active role in trying to move things  
25 forward with respect to a nuclear policy at the



1 federal level. And you all are familiar with state  
2 Legislature. A lot of times these are complicated  
3 issues. Members will say, you all need to go try  
4 to figure this out -- get together and figure this  
5 out. I think a similar thing happens at the  
6 congressional level, and we have players here who,  
7 I think, can be -- play meaningful leadership roles  
8 in trying to figure out this nuclear issue.

9 It's not an easy issue. It's a hard one, but  
10 in order for it to get done, people like our  
11 utility companies here are going to have to play a  
12 role. And I didn't mean to overlook Southern  
13 Company. They are a big player as well. But I  
14 guess we are kind of just sending a message that  
15 everything ought to be done to try to move things  
16 forward on the federal level.

17 You know, the policy here in your writeups  
18 talks about the earliest that the feds could come  
19 pick this up is 2024, and the medium-term view is  
20 2026 and the long-term view 2050. Those are really  
21 long timeframes, and we would think from a  
22 ratepayers' standpoint, rather than have the  
23 ratepayers, every year, here is what is costs for  
24 O&M, here is what is costs for maintenance at three  
25 facilities in Florida, that the better plan is to

1 try to really start moving the ball forward at the  
2 federal level on this policy and try to address it.

3 So those were the comments that FIPUG wanted  
4 to make. Thanks for hearing us out.

5 CHAIRMAN GRAHAM: I don't even think  
6 Commissioner Edgar will be here in 2050.

7 Commissioner Brown.

8 COMMISSIONER BROWN: Thank you.

9 And Mr. Moyle, I just wanted to say I  
10 appreciate your comments. On behalf of Florida, I  
11 serve on the Nuclear Waste Strategy Coalition to  
12 deal with this very issue that you are talking  
13 about. And there are players in the room here that  
14 also have a very vocal interest in it as well. In  
15 Florida, our interests are represented on the  
16 federal level, and we do get up to the hill, and we  
17 do talk to the federal congressional members that  
18 have an interest in it. And I will assure you, we  
19 are definitely stressing moving forward with Yucca  
20 Mountain and making sure we have a permanent  
21 repository sooner, rather than later, so I just  
22 wanted to add that.

23 CHAIRMAN GRAHAM: Duke, did you have anything  
24 you wanted to add?

25 MR. BERNIER: Thank you, Mr. Chairman. I

1           guess just to respond -- and thank you,  
2           Commissioner Brown, for the mentioning of the  
3           federal work that's being done in Florida.

4           I guess on the cost issue, I think really the  
5           issue here is that we have come forward with a  
6           proposal where we would wait to move capital costs  
7           into base rates until the Department of Energy  
8           litigation concludes, which would reduce the  
9           capital costs that are being borne by the  
10          customers. And really it's a clean proposal with  
11          benchmarks, and 2021 is the estimated end of that  
12          litigation. And while it could drag a little bit  
13          longer due to appeals or something, it at least is  
14          a clean benchmark and we would have a process to  
15          move forward the proposal that I think I heard, it  
16          really wouldn't be a defined framework for going  
17          forward. I am just really not sure how that would  
18          work. But I think the proposal in front of you  
19          today is a clean and justifiable proposal.

20                   CHAIRMAN GRAHAM: Thank you.

21                   Commissioner Balbis.

22                   COMMISSIONER BALBIS: Thank you.

23           I have a question for Duke about this issue.  
24           And recently, I think it was the last agenda  
25           conference, we approved the new nuclear

1 decommissioning study, which looked at changing the  
2 method of storage to the safe store system, and the  
3 recommendation was that the accrual should remain  
4 the same, which is essentially zero. And it's my  
5 understanding, the safe store system is the dry  
6 cast storage that's being proposed, so why wouldn't  
7 you just access those funds to address the issue  
8 Mr. Moyle is proposing? And does that put you in a  
9 less sound footing from a legal litigation  
10 standpoint? Or why not just access those funds?

11 VOICE: Sure, commissioner, there is actually  
12 two reasons come to mind for why the funds can't --  
13 first the Nuclear Decommissioning Trust Fund that's  
14 in place right now was not designed to include the  
15 storage facility due to the fact that the storage  
16 facility was proposed originally to be built before  
17 retirement of the unit.

18 If we were to try to access those funds now to  
19 use to pay for this based on the potential for  
20 recovery from DOE, our understanding from the tax  
21 treatment standpoint is that the tax treatment of  
22 the trust fund would change from its capital gains  
23 tax rate of 20 percent and go to the statutory rate  
24 of 38 percent, which would have an impairment on  
25 the fund going forward. So for that reason, those

1 funds can't be used for the dry cast storage, which  
2 I think is easier to say than ISFSI, which is a  
3 mouthful.

4 CHAIRMAN GRAHAM: Okay.

5 COMMISSIONER BALBIS: Okay. Are there any  
6 other options if those funds can't being utilized,  
7 just having customers pay now some of the capital  
8 costs associated with that, or does that put you in  
9 a week litigation position?

10 MR. BERNIER: I can't say that it would put us  
11 in a weaker litigation position against the DOE. I  
12 think by putting the capital costs in, what we  
13 would be talking about is roughly 2017, we would  
14 simply have a larger pot of capital costs that are  
15 being paid by customers prior to DOE -- prior to  
16 receiving rewards from -- awards from DOE. So we  
17 are looking at, under this proposal, is shrinking  
18 the capital base that would be would be asking for  
19 customers to be paying. So I don't know that there  
20 is another possibility.

21 The other possibility, I suppose, would be to  
22 go forward as the settlement agreement -- as in the  
23 settlement agreement, which would be to put the  
24 capital costs in in 2017.

25 COMMISSIONER BALBIS: Okay.

1                   CHAIRMAN GRAHAM: Commissioner Brown.

2                   COMMISSIONER BROWN: I think this is better  
3 and I am prepared to make a motion. I move staff  
4 recommendation on all issues.

5                   CHAIRMAN GRAHAM: It's been moved and seconded  
6 staff recommendation on all issues on Item Number  
7 13.

8                   All in favor say aye.

9                   (Chorus of ayes.)

10                  CHAIRMAN GRAHAM: Any opposed?

11                  (No response.)

12                  CHAIRMAN GRAHAM: By your action, you have  
13 approved staff recommendation.

14                                 (Agenda item concluded.)

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