BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Nuclear Cost Recovery Clause.	DOCKET NO.: 150009-EI
In re: Fuel and Capacity Clause	DOCKET NO. : 150001-EI
	FILED: March 05, 2015

INTERVENOR'S RESPONSE TO DUKE ENERGY FLORIDA, INC.'S PETITION TO END THE FIXED LEVY NUCLEAR PROJECT RATE COMPONENT OF THE NUCLEAR COST RECOVERY CLAUSE CHARGES CONSISTENT WITH THE REVISED AND RESTATED STIPULATION AND SETTLEMENT AGREEMENT, SECTION 366.93, FLORIDA STATUTES, AND RULE 25-6.0423, F.A.C.

The Office of Public Counsel ("OPC"), the Florida Retail Federation ("FRF") and White Springs Agricultural Chemicals, Inc. d/b/a PCS Phosphate ("White Springs") ("Intervenors") through undersigned counsel file their Response ("Response") to **Duke Energy Florida, Inc.'s [1]Petition To End The Fixed Levy Nuclear Project Rate Component Of The Nuclear Cost Recovery Clause Charges Consistent With The Revised And Restated Stipulation And Settlement Agreement, Section 366.93, Florida Statutes, And Rule 25-6.0423, F.A.C.,** ("Petition") and requests the Florida Public Commission ("Commission") to grant in part, and deny in part, the relief requested therein. In support the Intervenors state as set out below.

1. The Revised and Restated Stipulation and Settlement Agreement ("Settlement Agreement" or "RRSSA") approved by the Commission in Order No. PSC-13-0598-FOF-EI authorized Duke to recover a fixed charge for the Levy Nuclear Project ("LNP") of $3.45/ 1,000 kWh for residential customers until the remaining known LNP

[1] Duke Energy Florida will be referred to as "Duke" or "DEF" herein.

costs, estimated in 2012 to be $350 million were recovered from Duke's customers. Under the Settlement Agreement, upon recovering those amounts Duke was directed to remove the above-described fixed charge. RRSSA, Paragraph 12.c.

2. On October 27, 2015 the Commission issued Order No. PSC-14-0617-FOF-EI ("Order 14-0617") which ordered Duke to make a "downward adjustment" of $54,127,100 ("the $54 million") to its projected 2015 expenses in the Nuclear Cost Recovery Clause ("NCRC"). Order 14-0617 at 13. This adjustment arises from Duke's claim in a subsequent law suit that the above amount concerns advance "milestone" payments that Duke made to Westinghouse for LNP work and equipment that were never performed or manufactured because Duke had terminated its contract with Westinghouse for the LNP project, and which the Commission determined that Duke likely would recover those funds from Westinghouse. Order 14-0617 at 12. This adjustment reduced the remaining balance of costs to be recovered through the LNP fixed charge. The resulting accounting adjustment (i.e. $54 million) causes the recovery of the known LNP costs to be complete in May 2015; thus, the $3.45 charge should be terminated at that time.[2]

3. On November 11, 2014, the deadline for seeking reconsideration of Order 14-0617 expired with no party seeking reconsideration. On November 26, 2014, the deadline for filing a Notice of Appeal of Order 14-0617 expired with no party taking an appeal. Thus Order 14-0617 is final for all purposes.

[2] Throughout the Petition, Duke labels the downward adjustment as "deferred collection" of the $54 million. In reality, the money is part of a larger pot of dollars that has been collected since 2008-2009 and the concept of "deferral" is an artificial one designed by Duke to support the construct of "carrying costs." As the Commission noted and Duke did not challenge on appeal, the true nature of the dollars at issue is that they have largely been collected and the Commission has ordered them to be refunded in anticipation of a successful result in the federal court in North Carolina. Order 14-0617 does not refer to the $54 million downward adjustment or credit as a "deferred collection."

4. In its Petition, Duke purports to ask the Commission to authorize it to "end the fixed Levy Nuclear Project ("LNP") rate component of the Company's ...NCRC...charges..." Elsewhere in the petition, Duke indicates the expected date of this termination action is approximately May 2015. Petition at paragraph 13. The Intervenors fully support this specific request in Duke's petition because it is precisely what is required under the approved Settlement Agreement. We ask the Commission to grant this request unconditionally.

5. Consistent with the clear directive of Order 14-0617, recognizing the $54 million adjustment and implementing the May 2015 elimination of the $3.45 fixed LNP charge are all the relief that Duke should have requested in the Petition, and is the only affirmative relief that the Commission should grant. More specifically, these are the only aspects of the Petition upon which the Commission should take any action.[3]

6. The Intervenors submit that the most important consideration is that the tariff filed with the Petition should be acted upon on an expedited, unconditional basis so that customer rates can be reduced at the earliest time possible – approximately in the May/June 2015 timeframe. The only opportunity before May 2015 for the Commission to act on the tariff eliminating the LNP charge is at the Agenda Conference scheduled for April 16, 2015. The Intervenors ask that the Petition be considered and the tariff approved on that date.

7. In addition to requesting approval of the tariff revisions required to effect removal of the fixed LNP charge from consumer rates, Duke also requests Commission

[3] While there are aspects of the Petition that the Intervenors dispute, the Intervenors only highlight one in particular as needing specific correction on the record (see paragraph 15). In all other respects, we stand on our written positions taken on the record in Docket No. 140009-EI and reserve all rights to contest the legality of charges that Duke may seek to recover in the future and do not waive any rights or legal or factual arguments that we are otherwise entitled to make.

approval of accounting treatment deferring recovery of the $54 million as well as accrued carrying charges on that amount. Petition at paragraph 13. Since the Commission has previously determined that it expects Duke to recover those monies from Westinghouse, there is no need for the Commission to address Duke's requested deferral treatment of the $54 million. Furthermore, deferral accounting for carrying charges on that sum is inappropriate and inconsistent with the Commission's 2014 ruling (i.e., accruing carrying charges on the $54 million presumes that Duke eventually expects to recover that amount from consumers rather than Westinghouse). Intervenors respectfully request that the Commission deny those elements of the Duke Petition.

8. Unfortunately, throughout the Petition Duke seeks to condition giving its customers the benefit of the $54 million downward adjustment ordered by the Commission on re-interpretations or "clarifications" of Order 14-0617 insofar as such proposed self-serving re-interpretations and clarifications would effectively allow *automatic* re-recovery from customers of the $54 million if certain unknowable events come to pass. In addition, associated carrying costs related to the $54 million would also be included in the automatic re-recovery under Duke's supplemental request. As further described below, the Intervenors object to this aspect of the Petition on several grounds.

9. Next, Duke does not stop at seeking to condition elimination of the LNP fixed charge on the pre-approved contingent re-recovery of the $54 million. Duke further seeks to interject into the Petition a proposed re-interpretation of Order 14-0617 to require presumptive recoverability from its customers of up to $512 million of Westinghouse Electric Company ("WEC") LNP Engineering and Procurement Contract ("EPC") claims which Duke is vehemently denying and contesting in federal court in North Carolina

("WEC Litigation Claims"). Petition at paragraph 9. This aspect of the Duke Petition must summarily be denied. No part of the disputed $512 million has ever been presented to the Commission for its review and consideration, and the Commission has not previously attempted to review or approve the terms of the EPC contract for LNP. As further set out below, Duke's efforts to interject entirely speculative future potential WEC Litigation Claim dollars into the ministerial implementation of the final decision embodied in Order 14-0617 has no factual basis and is not consistent with the requirements of Section 366.93.

10. With regard to anything beyond implementing the $54 million downward adjustment and eliminating the LNP charge, Duke is improperly seeking untimely reconsideration of Order 14-0617 by seeking to condition the unequivocal, expressly ordered downward adjustment (i.e. credit of the $54 million to customers) in the 2015 NCRC expenses on the Commission's acceptance of Duke's expansive and unsupported interpretations of Order 14-0617 and the Settlement Agreement.

11. When it voted to issue Order 14-0617, the Commission conducted a discussion at the October 2, 2014 Special Agenda Conference (Transcript included as Attachment A), which is memorialized in a vote sheet (Vote Sheet included as Attachment B). The Commission also issued a press release explaining its decision (Press Release included as Attachment C). It is clear from the discussion at the Agenda Conference (See, Transcript at pp 32-33) that the Commission intended that Florida Customers receive a credit for the $54 million. This was all that the Commission ordered. The mechanism for effectuating this credit was a downward adjustment to the 2015 NCRC expenses. The Commission's guidance and intent is clear on the face of the order and reinforced by the other documents in Attachments A-C attached hereto. Duke did not seek clarification or

reconsideration or otherwise challenge the order on appeal. Any expansion or clarification amounts to untimely reconsideration and should not be entertained by the Commission. Approval of the $54 million credit and the resulting termination of the LNP charge should be approved by the Commission on an expedited basis and, in practical terms, as a purely ministerial matter. The Commission need take no other action.

12. Clarification of the accounting treatment of what Duke calls "carrying costs" on the "balance deferred for collection" (Petition at paragraph 12) is unwarranted. The Intervenors continue to object to the Commission replacing the $3.45 LNP fee with one that purports to recover carrying costs associated with the $54 million. The Intervenors continue to dispute the validity of Duke's claim that the phantom payments (of $54 million for work never even begun) are ultimately recoverable under Section 366.93, F.S. As noted above, the corollary to the Commission's 2014 finding supporting the downward adjustment to LNP remaining known costs is that there is no rational basis for authorizing Duke to accrue carrying costs on such phantom costs.

13. The existence of, or need for specific accounting treatment of, putative carrying costs is at best premature insofar as there is no decision from the federal court at this time. The only necessary Commission action at this time is the ministerial implementation of a final Commission order (Order 14-0617) that is not subject to further revision, clarification, explication, or reconsideration. That Commission order and the provisions of the RRSSA are equally unambiguous in this regard. Section 366.93, F.S. is clear. The required elimination of the LNP fixed charge should not, in any respect, be tied to Duke's new position that it will remove the charge only if it is also granted deferral treatment to which it is not entitled. Pursuant to Order 14-0617, Duke has an affirmative

obligation to remove the $54 million from its current LNP cost recovery and to discontinue the fixed charge upon recovery of the remaining adjusted project balance (i.e., by the end of May 2015). Moreover, the Commission, should not take any action, including in particular authorizing deferral treatment for either the $54 million or carrying charges tied to that amount that would suggest to Duke and Westinghouse that Florida consumers are guarantors of the outcome of their litigation over the EPC contract and its termination. For the protection of Duke's customers, the Commission should avoid prejudicial, premature and unnecessary advisory language about cost recovery related to (1) the $54 million, (2) any putative carrying costs associated with the $54 million or (3) the WEC Litigation Claims. The outcome of the litigation in federal court should stand on its own merits and not be subject to the risk of being influenced by the specter of any aspect of any judgment or resolution resulting from the claim of any party to the federal court litigation being recoverable from captive, remote Duke customers in Florida.

14. The Intervenors note for the record that they have never agreed to any language in stipulation or the Joint Brief that concedes or even acknowledges that Duke has a right to recover from customers any future potential dollars associated with the WEC Litigation Claim. That is a matter yet to be brought before the Commission in any substantive way. When the time is ripe – if ever – the Intervenors have extensive and substantive evidence to introduce at hearing regarding the prudence and recoverability of the type of costs that are the subject of the WEC Litigation Claim. In ordering Duke to credit its customers the $54 million, the Commission did not even remotely consider the substance or legal status of the $512 million in the WEC Litigation Claim with respect to its potential recoverability under Section 366.93, F.S., or the Commission's rules or orders.

Accordingly, there is no legal or policy basis for the Commission to give an advisory opinion to Duke or to help the company get pre-approval for recovering imprudently incurred costs (in the event of an adverse judgment in federal court).

15. Finally, the Intervenors are compelled to point out that Duke has misrepresented the Intervenors' written statements about the WEC Litigation costs. In paragraph 14 of the Petition, Duke cites to page 12 of the Joint Brief to suggest that the Intervenors have agreed that, after terminating the $3.45 LNP charge as proposed, Duke "should be permitted to come back to the Commission at the conclusion of the WEC litigation and demonstrate the recovery from customers of the resulting LNP costs consistent with the requirements of Section 366.93 and Rule 25-6.0423." This is an erroneous statement. Page 12 of the Intervenor's Joint Brief **solely** related to the $54 million and stated as follows: "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." The Intervenors' position is unambiguous and in no way references or applies to the $512 million WEC Litigation Claim. Furthermore, on page 17, the Intervenors conceded that terminating the LNP charge as Duke now proposes in compliance with Order 14-0617 does not foreclose Duke from "asking the Commission to establish or re-establish a charge for any final true-up" purposes as contemplated in the RRSSA. The entire Joint Brief is included as Attachment D and speaks for itself.

CONCLUSION

The Intervenors respectfully request that the Commission take up the Petition on an expedited basis and take appropriate action to approve the tariff attached to the Petition so that the LNP Charge is eliminated as soon as the known costs are recovered and after taking into account the Commission-ordered $54 million downward adjustment. In all other respects the Commission should decline to take action on the Petition.

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 5th day of March, 2015, to the following:

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ATTACHMENT A

BEFORE THE
FLORIDA PUBLIC SERVICE COMMISSION

In the Matter of:

DOCKET NO. 140009-EI

NUCLEAR COST RECOVERY CLAUSE.
_____/

PROCEEDINGS: SPECIAL AGENDA

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

DATE: Thursday, October 2, 2014

TIME: Commenced at 11:55 a.m.
Concluded at 12:40 p.m.

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

REPORTED BY: LINDA BOLES, CRR, RPR
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P R O C E E D I N G S

COMMISSIONER BRISÉ: So we are going to convene the special agenda, Docket Number 140009-EI, the NCRC.

MS. LEWIS: Good morning, Commissioners.

COMMISSIONER BRISÉ: Okay. Good morning. I tell you how we're going to do this. We're going to take up the FPL portion first, and so you all will make your introductions for the issues. And then we will go through them and vote on each item and move that way. Okay?

So starting with Issue 10.

MR. GARL: Commissioners, as you recall, you approved a procedural motion in which all the parties waived witness cross-examination and post-hearing briefs on the remaining contested issues for FPL. The Intervenors therefore did not present arguments on these issues, only positions.

Issue 10 asks if the Commission should approve FPL's 2014 analysis of the long-term feasibility of completing the Turkey Point Units 6 and 7 project. While the Intervenors stated that the Commission should not approve FPL's filing, none provided support or offered alternative analysis for their position.

Staff reviewed the economic, regulatory,

technical, funding, and joint ownership factors in FPL's analysis and identified no error or flaw that would render the analysis unreasonable. At this stage of the project there continues to be uncertainty with respect to when the NRC will issue the COL and other factors. Low natural gas price forecasts and air emission allowances resulted in a decline in the estimated break-even range relative to last year. However, staff believes the analysis demonstrates completion of the Turkey Point project is feasible. Staff recommends approval of FPL's analysis.

COMMISSIONER BRISÉ: Thank you very much.

Commissioners, are there any questions or comments on Issue 10?

Commissioner Brown.

COMMISSIONER BROWN: We're still using the lights here.

You know, I wanted to just reiterate, Commissioners, that this is an extremely important project for Florida, for FPL, for its customers. I think the evidence in the record was clear, and I'm confident that staff will continue to analyze annually the cost-effectiveness of this very important project as they move forward, so I am supportive of it.

COMMISSIONER BRISÉ: All right. Commissioner

Balbis.

COMMISSIONER BALBIS: Thank you, Mr. Chairman. I want to echo some of the comments Commissioner Brown has made. I think that Florida Power & Light continuing to move forward with these projects are very important for the State of Florida. I think with us having reduced options for baseload generation and looming EPA guidelines and requirements for carbon reduction makes these projects even more important.

Specifically in this docket in reviewing the long-term feasibility for the project that is required, I was comforted to see that in the 2014 break-even analysis for the total cost of the plans, both with and without Turkey Point 6 and 7, in each of the scenarios, which depend on environmental compliance costs and fuel costs, the resource plans with Turkey Point 6 and 7 were cheaper than any of the resource plans without it. So that on top of the other analysis that FPL has done and that staff has done, I'm comfortable that the costs associated with these projects are prudent for customers to pay for in the next year.

COMMISSIONER BRISÉ: All right. Thank you very much.

Is there a motion?

COMMISSIONER BROWN: Move staff

recommendation.

COMMISSIONER BALBIS: Second.

COMMISSIONER BRISÉ: Okay. It's been moved and seconded. All in favor, say aye.

(Vote taken.)

All right. Thank you very much. Moving on to 10A.

MR. GARL: Thank you, Mr. Chairman.

Issues 10A and 10B are both informational issues asking, first, the current total estimated cost of the Turkey Point project and the estimated planned commercial operation date of the project.

Staff recommends approval of the amounts FPL reported, which is a range of $12.6 billion to $18.4 billion, and operational dates of 2022 and 2023.

COMMISSIONER BRISÉ: All right. Commissioners? Commissioner Brown.

COMMISSIONER BROWN: I would move staff recommendation on Issue 10A.

COMMISSIONER BALBIS: Second.

COMMISSIONER BRISÉ: Okay. It's been moved and seconded. All in favor, say aye.

(Vote taken.)

Okay. 10B, I think we need a motion.

COMMISSIONER BROWN: Move staff

recommendation. But, Mr. Garl, please .

MR. GARL: Just reiterating, the staff recommends approval of the dates reported by FPL, which are 2022 and 2023. While the Intervenors speculated that the actual dates would be different, no alternative estimated was provided.

COMMISSIONER BRISÉ: Okay. Thank you.

Commissioner Balbis.

COMMISSIONER BALBIS: I have one question for staff. Obviously the enacting of Senate Bill 1472 into law clearly affects the Nuclear Cost Recovery Clause. With the estimated in-service dates, did those take into account the new statute and provisions of the statute?

MR. GARL: Yes, Commissioner, they do.

COMMISSIONER BALBIS: Okay. Thank you. With that, I second Commissioner Brown's motion to approve staff's recommendation on Issue 10B.

COMMISSIONER BRISÉ: All right. Any further discussion? Okay. Seeing none, it's been properly moved and seconded. All in favor, say aye.

(Vote taken.)

Okay. Thank you. Moving on to Issue 12.

MR. BREMAN: Issue 12 asks what jurisdictional amount should the Commission approve as FPL's final 2013 prudently incurred costs and the final 2013 true-up

amount for the Turkey Point project. FPL's activities during 2013 focused on efforts to secure the necessary permits and licenses. FPL engaged in dependent consultants to review FPL's project oversight. Each concluded that FPL had prudently incurred its 2013 costs.

Staff audited FPL's financial records and project management. No findings were reported. No other independent review or testimony was presented. Staff reviewed FPL's findings, the filings that staff audit witnesses provided, and other relevant discovery.

Based on its review, staff recommends the Commission approve $33,045,060 as FPL's final 2013 prudently incurred jurisdictional costs.

The resulting 2013 final true-up amount is an over recovery of $463,650, which will be used as a final true-up amount in Issue 17.

COMMISSIONER BRISÉ: Okay. Commissioners, any questions?

COMMISSIONER BALBIS: Mr. Chairman, I move approval of staff's recommendation on Issue 12.

COMMISSIONER BROWN: Second.

COMMISSIONER BRISÉ: Okay. It's been moved and properly seconded. Any further discussion? Seeing and hearing none, all in favor, say aye.

(Vote taken.)

All right. Thank you.

Moving on to Issue 13.

MR. BREMAN: Issue 13 asks what jurisdictional amount should the Commission approve as reasonably estimated 2014 costs and estimated 2014 true-up amounts for FPL's Turkey Point project.

During 2014, FPL anticipated it would secure its site certification and engage in efforts necessary to support the NRC review process. FPL's filing only indicated costs for licensing and permitting activities. Consistent with staff's verification of FPL's calculations and review of the records, staff recommends the Commission approve as reasonable FPL's estimated 2014 cost of $24,268,636. The estimated 2014 under recovery true-up should be of -- $958,251 should be used in Issue 17 to calculate FPL's net recovery amount.

COMMISSIONER BRISÉ: Okay. Commissioners, any questions?

Commissioner Balbis.

COMMISSIONER BALBIS: Thank you, Mr. Chairman.

I just have one clarification. And, Mr. Breman, I know you stated this, but just to confirm once again that those costs that are anticipated to be incurred are solely for the licensing and permitting

activities of the project.

MR. BREMAN: Correct.

COMMISSIONER BALBIS: Okay. Thank you. And with that, I move staff's -- approval of staff's recommendation on Issue 13.

COMMISSIONER BROWN: Second.

COMMISSIONER BRISÉ: Okay. It's been moved and properly second. Any further discussion? Seeing none, all in favor, say aye.

(Vote taken.)

All right. By your action, you have approved Issue 13.

Moving on to Issue Number 14.

MR. BREMAN: Commissioners, Issue 14 asks what jurisdictional amount should the Commission approve as reasonably projected 2015 costs for FPL's Turkey Point Units 6 and 7 project.

FPL projected that during 2015 it will be implementing site certification requirements and addressing any site certification appeals. FPL estimated that the NRC review of its COL application would come in late 2017. FPL's filing only identified costs associated with licensing and permitting activities.

Based on a review of the record and FPL's

calculations, staff recommends that the Commission approve $19,342,894 as FPL's reasonably projected jurisdictional 2015 costs for the Turkey Point project.

COMMISSIONER BRISÉ: All right. Thank you very much.

Commissioner Brown.

COMMISSIONER BROWN: Yes. And, Commissioners, I would like to point out that only SACE opposed this amount, and that stemmed from their belief and their concerns in the long-term feasibility of completing the project. None of the other Intervenors contested this issue. And with that, I would move staff recommendation. Actually I move staff recommendation on Issues 14 and 17 as a fallout.

COMMISSIONER BRISÉ: Okay. Is there a second?

COMMISSIONER BALBIS: Second.

COMMISSIONER BRISÉ: There's a second to moving on Issues 14 and 17. Any further discussion? All right. Seeing none, all in favor, say aye.

(Vote taken.)

By your motion, we have -- by your action, you have approved Issue 17, so therefore we have addressed all of the issues related to the FPL issue topic, Issue Numbers 10, 10A, 10B, 12, 13, 14, and 17.

At this time we're going to go ahead and move

to the Duke Energy Florida issue topic beginning with Issue Number 2.

MS. LEWIS: Yes, Commissioners. Issue 2 asks the Commission to determine if Duke has reasonably accounted for its combined operating license pursuit costs consistent with the requirements of the 2013 settlement agreement.

The 2013 settlement agreement requires Duke to exclude its COL costs from the NCRC beginning in 2014 and going forward. Duke's testimony regarding its cost estimate was not challenged by any Intervenor and staff audit witnesses did not make any findings.

Based on our review of the record evidence and the ongoing requirements of the 2013 settlement agreement, staff recommends the Commission determine that Duke has reasonably accounted for its COL costs.

COMMISSIONER BRISÉ: Okay. Commissioners, any comments?

Commissioner Balbis.

COMMISSIONER BALBIS: Thank you. Just a clarification from staff. The 2013 settlement agreement and the discussions that were held during that process indicated that Duke would pursue the COL license at their own cost. So by properly accounting for it, customers are not paying for those pursuits; is that

correct?

MS. LEWIS: Right. 2014 and going forward, no.

COMMISSIONER BALBIS: Okay. Thank you. With that, I approve staff's recommendation on Issue 2.

COMMISSIONER BROWN: Second.

COMMISSIONER BRISÉ: Okay. It's been moved and seconded. Any further discussion? Seeing and hearing none, all in favor, say aye.

(Vote taken.)

Moving on to Issue 3.

MS. LEWIS: Issue 3 asks whether the Commission should approve Duke's requested Levy Project exit and wind down costs and other sunk costs proposed for recovery or review in this docket.

FIPUG took the position that the Commission should expressly state that it is taking no action related to the disposition of potential future costs that cannot be reasonably quantified at this time. No Intervenors disputed the cost or presented evidence that such costs were not reasonably quantified.

Staff reviewed the Levy Project exit and wind down costs and other sunk costs and concluded that the costs Duke has presented for recovery are in compliance with the NCRC statute, Commission rules, and the 2013

settlement agreement. Staff recommends the Commission approve Duke's Levy Project estimated exit and wind down costs of $14,679,680.

COMMISSIONER BRISÉ: All right. Thank you very much.

Commissioners? Commissioner Balbis.

COMMISSIONER BALBIS: Thank you, Mr. Chairman. I have a few questions for staff on this issue.

The exit and wind down costs of 14.68 million, plus or minus, that is what would be considered the jurisdictional amount; correct?

MR. LAUX: That's correct, Commissioner.

COMMISSIONER BALBIS: Okay. In a normal proceeding, similar to what we just went through with Florida Power & Light, in establishing the factor, a portion of this factor, it would be just the recovery of those jurisdictional amounts.

MR. LAUX: That is also correct.

COMMISSIONER BALBIS: Okay. And in 2012 the Commission approved a settlement agreement that established a $3.45 factor for 1,000 kilowatt hours usage for residential customer?

MR. LAUX: That is correct.

COMMISSIONER BALBIS: And that resulted in over, about $103 million in revenue to the company.

MR. LAUX: Approximately. When you apply that factor to the different sales forecasts for each year, it comes in the ballpark.

COMMISSIONER BALBIS: Okay. So obviously the -- Duke is recovering more than what's typically needed in an NCRC proceeding. And I asked, I believe it was Witness Foster, what additional items would the, would those revenues pay for. Could you explain what those items will be paying for?

MR. LAUX: I'll give it my best shot. Depending on what year you're looking at, there were certain costs that had been approved by the Commission for collection, but the actual collection of those were deferred. Those were called the rate management plan things.

I believe all of those costs will be collected by the end of this year. Additionally, there were other costs of which the capitalized portion of those were set aside and only the carrying charges on those had been flowed to the nuclear clause up until this point until they ended the project. At the time that they ended the project, you move in a different section of the statute in which any of the other unrecovered costs are allowed to be recovered over a period of time. It's that, the overage above the ongoing cost that is being applied.

So that's the -- if you take a hundred million, subtract 14 from it, the difference of that is what's being applied to these other costs that are investments that have been incurred but have not been recovered to date yet.

COMMISSIONER BALBIS: Okay. And I believe that was depicted in Mr. Foster's TGF-4 exhibit?

MR. LAUX: Correct.

COMMISSIONER BALBIS: Page 5 of 15.

MR. LAUX: Correct.

COMMISSIONER BALBIS: And is that captured in what's labeled as total jurisdictional uncollected investment?

MR. LAUX: Yes, sir.

COMMISSIONER BALBIS: Okay.

MR. LAUX: A portion of that, yes, sir.

COMMISSIONER BALBIS: And during the hearing process there was a lot of discussion on some confidential exhibits on the disposition of long-lead equipment items. Are the costs associated with those, would those be included in that total jurisdictional and collected investment or would the costs be recovered through that --

MR. LAUX: The payments that have been made towards those would happen. The jurisdictional amount

of the payments that have been made towards those would be non-confidential and would have been part of the ongoing costs that have been incurred from year to year. The actual total payment for it would be a system cost, and that is the dollar amount that is being held confidential.

COMMISSIONER BALBIS: Okay. And then the -- in TGF-4 the total jurisdictional uncollected investment that has yet to be recovered, how much is listed in that account for 2015?

MR. LAUX: As of what date?

COMMISSIONER BALBIS: On page 5 of 15 for the 2015 amount in the first --

MR. LAUX: The end of 2015?

COMMISSIONER BALBIS: Yes. No, the beginning of 2015.

MR. LAUX: 2015. Okay. If you could give me one moment, please.

The beginning balance of that amount, jurisdictional amount at the beginning of 20 -- at the end of 2014 would be $103,585,865.

COMMISSIONER BALBIS: Okay. And I'm trying to get a handle on what is the amount that's being written down when the jurisdictional amount is much less than what they're recovering. So I just want to feel

comfortable that there is an amount that still needs to be recovered. Now that $103 million that's listed in -- I believe it's line 6H of TGF-4.

MR. LAUX: That's correct.

COMMISSIONER BALBIS: That includes reductions based on non-cash accruals or any other changes to that total jurisdictional amount; correct?

MR. LAUX: As of that date, yes, sir.

COMMISSIONER BALBIS: Okay. Thank you. That's all the questions I have on this issue.

COMMISSIONER BROWN: Move staff's recommendation.

COMMISSIONER BRISÉ: Okay. We have a motion.

COMMISSIONER BALBIS: Second.

COMMISSIONER BRISÉ: Okay. Moved and seconded on Issue Number 3. Any further discussion on Issue Number 3? Seeing none, all in favor, say aye.

(Vote taken.)

Okay. Moving on to Issue Number 4. Commissioner Brown.

COMMISSIONER BROWN: Thank you. And, you know, this is the big issue this year in this docket. And, Commissioners, we've had to make challenging decisions before, and often those challenging decisions have involved Duke and its customers. And we have made

those difficult decisions, I believe, in a very balanced and fair approach, always having the public interest at heart regardless of any outside political pressures. That's our job. That is our role as a Public Service Commissioner, to be impartial, fair, and independent, and I believe we do just that. We carry out the laws that were set forth by the Legislature and we strive to uphold them, but sometimes we must take a pause and take a step back and reflect on what is right.

This Commission gives a great deal of thought and consideration into our decisions, all of them, especially those affecting 1.7 million Floridians. We don't rubber stamp anything. We scrutinize everything, and this matter right here is a prime example of the thoughtful review and analysis that we give.

I believe that the intent of the nuclear cost recovery statute, when it was enacted, was to promote nuclear generation, but unfortunately it did not contemplate some of the unintended consequences that have occurred, like customers paying for work that has never been performed.

When we approved the settlement agreement back in 2013, which the Office of Public Counsel was ardently supportive of, the intent was, which was quoted, "to stop the bleeding for Duke's customers." Under that

same settlement agreement there is a provision in there that provides that Duke shall use its reasonable and prudent efforts to refund any and all costs that can be recaptured for the benefit of the customers.

Duke, therefore, does have the opportunity here to mitigate the tragic events that have thus occurred. They have an opportunity to make the necessary adjustment today, instead of waiting for the potential unknowns of a lawsuit that may or may not be settled or may not provide for the full amount of recovery back to the customers. And I want to reiterate to Duke my strong encouragement to continue pursuing the full recovery under the lawsuit with Westinghouse.

To me, I just don't believe it's fair that customers are being asked to pay for longer than is possibly necessary. It's also not appropriate for customers to pay for equipment that was never provided. And I know $3.45 may not sound like a lot to some people, but it is a lot and it is a lot for these Duke customers. And, Commissioners, I do believe we have the duty to do what is fundamentally fair, right, and in the public interest, and deny staff's recommendation.

And with that, I would like to ask staff, if this is the avenue that my fellow Commissioners would support, is there a way, a mechanical way of providing

the benefits to customers now that recognizes the arguments that were made by the Office of Public Counsel in this docket and the Intervenors, while also preserving our past decisions by the Commission on the prudency of those dollars? And I'm going to look to Mr. Hinton on that.

MR. HINTON: Yes is the answer to your question. Commissioners, there are a couple of concerns that staff has with OPC's approach, their proposed approach to addressing the $54 million, and I believe we addressed that in our recommendation.

However, if you were to modify their approach to address those concerns, staff believes that we can address the $54 million in this year's proceeding.

First, OPC wants Duke to record a cash credit in their books as of January 2014. Without going into the accounting problems with that again, we believe that you could order Duke to make an adjustment to projected 2015 expenses. There is a reasonable expectation that the court case could be resolved in 2015, and upon that basis you could order an adjustment to project the 2015 expenses.

Now, second, OPC had stated that a cash credit applied back to January 2014 as they had advocated would achieve full collection of the Levy costs in 2015,

triggering the need to terminate the fixed recovery rate established by OPC's settlement with Duke. Staff is uncomfortable suggesting that a termination date for the recovery charge be established at this time because testimony in the record indicates that final costs are not yet quantifiable.

So instead of ordering a termination date for the recovery charge at this time, staff would recommend that the Commission recognize that paragraph 12C of the 2013 settlement agreement obligates Duke to notify all parties when final costs are known and a final recovery date is expected by filing an estimated final true-up. That could very well be in 2015, which could even result in a midcourse correction to terminate the Levy recovery charge, which seems to be OPC's intent in the end of this.

We, but we believe that the terms of the 2013 settlement agreement between OPC and Duke addressed the termination of the recovery charge, and no specific action by the Commission concerning the termination of the recovery charge is needed at this time.

COMMISSIONER BROWN: So the -- we can't necessarily require the utility to file a midcourse correction? Is that under our rules?

MR. HINTON: Well, it's -- midcourse

correction -- let me back up.

Under the terms of the 2013 settlement agreement, which is really governing the recovery for Duke at the end of these projects, they're obligated -- when final costs, when the final recovery is approaching, they're obligated to file a final true-up. That's at what point which will trigger the transition from the Levy nuclear cost recovery fixed rate to the other recovery aspects of the settlement agreement. But that is, that is the point at which time they would need to come in and file the final recovery.

COMMISSIONER BROWN: And, you know, Mr. Hinton, if you could, walk -- for the benefit of the people that are watching, the people that are concerned, can you, can you walk us through in very simple laymen's terms what that $3.45 is and what Office of Public Counsel and the Intervenors have avowed in the proceedings?

MR. HINTON: Yes. The $3.45 goes towards recovery of remaining Levy Project costs. And the -- under subsection 6 of the statute and I think subsection 7 of our rules, when a project is terminated, the costs are generally to be -- you take the pot of money that's unrecoverable and you amortize it over a certain amount of time, five to seven years. And you

see in Issue 9 that is what's taken place with the CR3 uprate project is you've got an amortization amount that you're going to be doing each year.

For the Levy Project, during the -- under the 2012 settlement agreement, the $3.45 rate was established to deal with Levy nuclear cost recovery. That was before the project was terminated. In the 2013 settlement agreement, they decided to keep that rate in place and apply it towards the termination costs and the final recovery of the Levy Project as opposed to taking a pot and amortizing it over a certain amount of years. That is why we're still -- that's why it's important to recognize that the final costs of the wind down termination of the project are not yet known is because it's not a closed bucket that we're now amortizing. It's -- we're recovering those costs going forward and it's approaching.

COMMISSIONER BROWN: Okay. So let's just, in real simple terms, if we make an adjustment for the $54 million and reject staff's recommendation, what affect would that have on customers? Would that curtail the $3.45 sooner?

MR. HINTON: No. No. $3.45 -- well, potentially. $3.45 is what is going to be charged as of January 1st.

COMMISSIONER BROWN: My understanding was yes.

MR. HINTON: No. It's -- $3.45 is the rate that will be applied January 2015. What that $54 million adjustment will likely have an affect on is the timing of the true-up. That true-up is what will determine when that $3.45 stops.

So if you move the true-up by this $54 million adjustment, you move the true-up forward in time, then, yes, you will have an impact in how soon that $3.45 ceases to be charged.

COMMISSIONER BROWN: Right. That is my understanding. So customers will stop paying the $3.45 that they otherwise would have paid for a longer period of time under the settlement agreement that was, again, supported by all of Duke's major customer groups and actively -- including the Office of Public Counsel.

MR. HINTON: Correct.

COMMISSIONER BROWN: Thanks.

COMMISSIONER BRISÉ: Commissioner Balbis.

COMMISSIONER BALBIS: Thank you, Mr. Chairman.

I want to address this issue on perhaps a different angle than Commissioner Brown, although I agree with her on many points.

In 2008 and 2009, this Commission deemed the costs associated with those, with the generator project

and the other projects associated with the $54 million as prudent. However, since that time Duke has decided to terminate the contract, and the termination of the contract and the evidence in the record indicates customers are never going to receive that equipment. Fortunately, both the statute, our rule, and even the settlement agreement dictate what happens once Duke terminates these projects, which I think makes it a little easier for us in this case.

And in reading from subsection 7 of Rule 25-6.0423, it states that, "In the event the utility elects not to complete or is precluded from completing construction of the power plant, the utility shall be allowed to recover all prudent site selection costs, preconstruction costs, and construction costs." Obviously if the customers will never receive this equipment, it is not prudent. And I do believe that we have a mechanism to make the appropriate adjustment.

During the hearing in Foster and Fallon's testimony there was a lot of discussion on the disposition of long-lead equipment. This $54 million was included as a portion of those. Those dollars are associated in that total jurisdictional uncollected amount that I discussed in the previous issue. So we have a mechanism in order to do that.

So I think that one other way that we can make sure that customers are made whole is to make an immediate adjustment either in the non-cash accrual portion of that schedule or simply reducing the total jurisdictional uncollected amount by the $54 million. I think that we have the authority to do so, and both the rules, the statutes, and the settlement agreement both contemplated this scenario that we're in today. So I look forward for further comments from my fellow Commissioners.

COMMISSIONER BRISÉ: Okay. I'd like to hear from staff in terms of the mechanisms that have been brought forth by Commissioner Balbis.

MR. HINTON: Let me make one quick point, and then I'll -- as far as mechanisms are concerned and where it would be -- could be recorded.

Those payments were, back in 2008 and 2009, were deemed by this Commission to be prudently incurred. Without a showing of fraud, perjury, or willful withholding of information, you can't overturn that determination of prudence. The fact that circumstances have changed and the cancel -- the project was canceled and that equipment will no longer be obtained by the company and used by the company doesn't change the determination of this Commission those costs were

prudently incurred back at the time that they were incurred without using hindsight --

(Simultaneous conversation.)

COMMISSIONER BALBIS: Mr. Chairman, can I, can I interrupt here?

COMMISSIONER BRISÉ: Sure.

COMMISSIONER BALBIS: I think there's a misrepresentation of my statement. I in no way indicated that I was going to change or overturn a previous Commission's decision, and the statutes and the rules clearly indicate that this Commission is the one that determines what is a prudently incurred cost or not and what changes it. And I'm not sure if having staff tell us what we can and can't do in this case on a prudence determination is appropriate. But my position is that the statute and the rules contemplated what happens when a project is terminated. This is part of the long-lead equipment items that were discussed at length in the evidence in the record, and therefore we have the authority to make adjustments that we see fit.

COMMISSIONER BRISÉ: Okay. Commissioner Brown.

COMMISSIONER BROWN: I agree with the last statement, that we do have the authority to make the adjustments, but I certainly don't want to revisit

decisions that have already been made by the Commission. That could be and would be challengeable after a finding of prudency absent those factors that Mr. Hinton and our legal department have advised me on. So I don't think we go down that route here at all.

COMMISSIONER BRISÉ: All right. So let me give you my perspective on this issue. We recognize that in 2006 the, this clause, the NCRC clause, was put in place due to circumstances that were affecting our state, certain gas prices and the need to look forward to a different type of way to produce energy within our state. Recognizing that, the Legislature decided that rather than to potentially saddle or allow the saddle-ment of customers with $60 or $70 bills at the end of a project being built, they decided to pursue the track of maybe establishing something similar to a partnership between the consumers and the utilities towards building these type of projects.

And as we all understand this process to be, it's a pay-as-you-go process. And the Commission made appropriate decisions along the way, identifying what was prudent and that the costs that were brought before the Commission were prudent and the expenses were prudent, and all of those things went according to the way it was supposed to go until a decision was made.

And as we all recognize, a decision was made not to move forward with the Levy Project because of circumstances that arose.

We recognize that ratepayers are frustrated and that is a reality. You talk to any ratepayer that resides in the Duke territory, they will tell you that they are frustrated.

Our duty, I believe, today is to find a way to address the issues that are frustrating the consumers, but do it in a way that reflects our current statutory framework: One that doesn't set us up for improper precedence, one that recognizes our former decisions, and one that recognizes that we have the authority to make adjustments as necessary.

An adjustment is not necessarily a disallowment of something. It is just an adjustment to reflect the reality of what we want to do as a Commission. So recognizing that reality, I believe that if we find a way to make the adjustment -- and I think what was brought out in terms of, if I understand it properly, that if we make an adjustment for the $54 million, it could curtail the amount of time that the $3.45 that our customers will be paying moving forward, it will shorten that period of time. Ultimately that is our goal. That is my goal. I don't

know if it's the goal of my fellow Commissioners because I can't speak for them, but that is my goal. My goal is to ensure that the consumers see that the concept that they paid for something that for some reason they haven't gotten, which I don't completely agree with, because the reality is that when you make a payment towards something, you've made a payment towards something that is going to be built in the future. And if you decide not to move forward, you still made the payment for something that is going to be built in the future.

So I think the company has done the appropriate thing by going after Westinghouse, and the Commission has the authority to decide in advance of that to make an adjustment. And so I think that that is, from what I'm hearing from my fellow Commissioners, that finding the mechanism to get that done is what we want to accomplish today.

And so I think that following the approach that Commissioner Brown laid out I think is the safest and cleanest way to achieve that particular goal that I think we all have with respect to this issue.

So I don't know if my fellow Commissioners have any more comments. Commissioner Balbis.

COMMISSIONER BALBIS: Thank you, Mr. Chairman.

And I agree with all of your comments, and I think we seem to be all on the same page here. And let's not forget where the $3.45 came from. In 2012, when we entered into a settlement agreement, there was an estimate on how much would need to be recovered because the projects were moving forward, and it was $350 million. So the intent at that time -- and I've reviewed the transcripts and I've looked at everything, and the final order, et cetera -- was it was an estimate of what was needed. And there was always the understanding that there's going to be adjustments as these costs come in.

I think this is a very clear circumstance where an adjustment is warranted, and it was contemplated when the $3.45 was first established in 2012 and then reestablished in 2013. So I think we not only have the authority to do so, but it is the right thing to do.

COMMISSIONER BRISÉ: All right. At this time I think we are in the proper posture to entertain a motion.

COMMISSIONER BROWN: Mr. Chairman, I would approve the modification proposed by Mr. Hinton here, and adjusting the $54 million -- or, pardon me, to reflect the reduction of $54 million. Mr. Hinton, is

that the correct way?

MR. HINTON: As of January 2015.

COMMISSIONER BROWN: Okay. That would be my motion, and to reject staff's recommendation.

COMMISSIONER BRISÉ: Okay. Is there a second?

COMMISSIONER BALBIS: I second it with -- if I could have a clarification.

COMMISSIONER BRISÉ: Sure.

COMMISSIONER BALBIS: So that adjustment will in essence credit the customers the $54 million.

MR. LAUX: It will reduce the balance of the uncollected capital investment in that project. Therefore, if the balance goes down and you're continuing to pay the $3.45, you will end up paying off that balance quicker.

COMMISSIONER BALBIS: I understand.

MR. LAUX: But there will not be an additional refund check that goes to customers, if that's what you're asking.

MR. HINTON: The answer is yes, Commissioner.

COMMISSIONER BALBIS: Thank you.

MR. LAUX: I didn't know what credit to customers meant.

COMMISSIONER BRISÉ: Well, in my book, I view that as a credit. If I had to pay X amount over two or

three years and ultimately I'm paying less, I'm receiving a credit. That's the way I perceive it, and I think that's the way our customers are going to view it, that they are receiving a credit.

COMMISSIONER BALBIS: And if that's the motion, I fully support it.

COMMISSIONER BROWN: Yes, sir.

COMMISSIONER BRISÉ: All right. It's been moved and seconded. Any further discussion? All right. Seeing no further discussion, all in favor, say aye.

(Vote taken.)

All right. Thank you very much. Moving on to Issue Number 5.

MR. LAUX: Issue 5 asks what restrictions, if any, should the Commission place on Duke's attempt to dispose of Levy long-lead equipment items.

The Intervenors, through a post-hearing brief, proposed that the Commission adopt a rebuttable presumption that any disposition of long-lead equipment to Westinghouse should reflect the original cost of those items charged to Duke's consumers.

In addition, they proposed that the Commission require Duke to seek and obtain advanced Commission approval for any final action to dispose of the remaining long-lead equipment items.

Staff's review of the record found no evidence establishing a regulatory need for these actions. Additionally, staff believes that the 2013 settlement agreement provides Duke with adequate guidance concerning the disposition of the assets in question. Therefore, staff recommends that the Commission place no additional restrictions at this time on Duke's attempt to dispose of the Levy long-lead equipment items.

COMMISSIONER BRISÉ: Okay. Commissioners? Commission Balbis.

COMMISSIONER BALBIS: Thank you, Mr. Chairman. The disposition of long-lead equipment items was addressed in the settlement agreement, and Duke is required to make every effort to maintain or gain as much value as possible for that. So I don't believe that any additional restrictions at this time are warranted. Certainly nothing came out in the hearing that would warrant additional restrictions, so therefore I move to approve staff's recommendation on Issue 5.

COMMISSIONER BROWN: Second.

COMMISSIONER BRISÉ: Okay. It's been moved and seconded. Any further discussion? Seeing and hearing none, all in favor, say aye.

(Vote taken.)

Moving on to Issue Number 9.

MR. LAUX: Issue 9 is Duke's fallout issue based on the resolution of prior issues. Consistent with recommendations in those prior issues, staff recommends the Commission approve the collection in 2015 of $63,204,163 associated with the ongoing Crystal River uprate project termination.

The Levy Project, based upon the fixed rate established pursuant to the 2013 settlement agreement, is estimated to collect $103,991,141 in 2014. An estimated total of $167,195,304 should be used in establishing the 2015 capacity cost recovery clause factor for Duke.

COMMISSIONER BRISÉ: Okay. Commissioner Balbis.

COMMISSIONER BALBIS: Thank you, Mr. Chairman. And I just want to address the extended power uprate portion of this amount. And as you recall, previously the prudence information or any of the testimony was deferred to this proceeding. And I reviewed all the documentation that Duke provided on their actions in dealing with the EPU project and when they notified the contractor to stop or slow down the work associated with it because of the 2011 delamination, because of different actions. So I believe that they acted prudently at that time, and therefore they should

recover the costs associated with that. So with that, I move approval of staff's recommendation on Issue 9.

COMMISSIONER BRISÉ: Okay. Is there a second?

COMMISSIONER BROWN: Second.

COMMISSIONER BRISÉ: Okay. It's been moved and seconded. Any further discussion on Issue Number 9?

Okay. Seeing none, all in favor, say aye.

(Vote taken.)

All right. I think we've covered all the issues with respect to this docket at this time.

Are there any other items that we need to discuss?

Okay. Seeing none --

MS. CRAWFORD: Staff has none.

COMMISSIONER BRISÉ: Okay. Thank you very much. Commissioners, any other items with respect to this docket that we need to discuss? Okay. Seeing none, we shall adjourn the Special Agenda. Thank you very much for your participation.

We will have Internal Affairs, we're going to go into Internal Affairs -- I think the Chairman suggested a ten-minute break in-between, so we expect to begin Internal Affairs at 12:50 Art Graham time.

(Proceeding adjourned at 12:40 p.m.)

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

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

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

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

DATED THIS 14th day of October, 2014.

Linda Boles

LINDA BOLES, CRR, RPR
FPSC Official Hearings Reporter
(850) 413-6734

ATTACHMENT B

FLORIDA PUBLIC SERVICE COMMISSION

Item 1

VOTE SHEET

FILED OCT 02, 2014
DOCUMENT NO. 05598-14
FPSC - COMMISSION CLER

October 2, 2014

Docket No. 140009-EI – Nuclear cost recovery clause.

Issue 2: Has DEF reasonably accounted for Combined Operating License (COL) pursuit costs, pursuant to paragraph 12(b) of the 2013 revised and restated stipulation and settlement agreement?
Recommendation: Yes, DEF has reasonably accounted for 2013 costs associated with the pursuit of a COL, pursuant to paragraph 12(b) of the 2013 revised and restated stipulation and settlement agreement.

APPROVED

Issue 3: Should the Commission approve DEF's Levy Project exit and wind down costs and other sunk costs as specifically proposed for recovery or review in this docket?
Recommendation: Yes. The Commission should approve DEF's Levy Project exit and wind-down costs of $14,679,680 for recovery in 2015.

APPROVED

COMMISSIONERS ASSIGNED: Brisé, Balbis, Brown

COMMISSIONERS' SIGNATURES

MAJORITY	DISSENTING

REMARKS/DISSENTING COMMENTS:

Docket No. 140009-EI – Nuclear cost recovery clause.

(Continued from previous page)

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?
Recommendation: Staff recommends that the Commission take no action on this Issue.

APPROVED as modified, per discussion at Commission Conference this date.
Adjusted to reflect a reduction of $54,127,100, as of Jan. 2015 (a credit to customers).

Issue 5: What restrictions, if any, should the Commission place at this time on DEF's attempts to dispose of Long Lead Equipment?
Recommendation: Staff recommends that the Commission place no additional restrictions at this time on DEF's attempts to dispose of Long Lead Equipment.

APPROVED

Issue 9: What is the total jurisdictional amount to be included in establishing DEF's 2015 Capacity Cost Recovery Clause Factor?
Recommendation: Staff recommends the Commission should approve as DEF's 2015 NCRC cost recovery an amount consistent with the rates approved in the 2013 Settlement Agreement for the Levy project and $63,204,163 for the EPU project. The total amount for use in establishing DEF's 2015 Capacity Cost Recovery Clause factor should be $167,195,304.

APPROVED

(Continued from previous page)

Issue 10: Should the Commission approve what FPL has submitted as its 2014 annual detailed analysis of the long-term feasibility of completing the Turkey Point Units 6 & 7 project, as provided for in Rule 25-6.0423, F.A.C?
Recommendation: Yes. The evidence presented by FPL fully considered the economic, regulatory, technical, funding, and joint ownership considerations impacting the feasibility of the project. While continuing uncertainty exists in virtually all these areas, staff believes completion of the TP Project appears feasible at this time. Staff recommends that the Commission should accept FPL's 2014 detailed analysis of the long-term feasibility of completing the Turkey Point Units 6 & 7 project.

APPROVED

Issue 10A: What is the current total estimated all-inclusive cost (including AFUDC and sunk costs) of the proposed Turkey Point Units 6 & 7 nuclear project?
Recommendation: The current total estimated all-inclusive cost (including AFUDC and sunk costs) of the proposed Turkey Point Units 6 & 7 nuclear project ranges from $12.6 billion to $18.4 billion as identified in Issue 10.

APPROVED

Issue 10B: What is the current estimated planned commercial operation date of the planned Turkey Point Units 6 & 7 nuclear facility?
Recommendation: The current estimated commercial operation date of the planned Turkey Point Units 6 & 7 nuclear facility are 2022 and 2023, respectively, as identified in Issue 10.

APPROVED

(Continued from previous page)

Issue 12: What jurisdictional amounts should the Commission approve as FPL's final 2013 prudently incurred costs and final true-up amounts for the Turkey Point Units 6 & 7 project?
Recommendation: The Commission should approve $33,045,060 as FPL's final 2013 prudently incurred costs and an over recovery of $463,650 as the final 2013 true-up amount for the Turkey Point Units 6 & 7 project.

APPROVED

Issue 13: What jurisdictional amounts should the Commission approve as reasonably estimated 2014 costs and estimated true-up amounts for FPL's Turkey Point Units 6 & 7 project?
Recommendation: The Commission should approve $24,268,636 as FPL's reasonably estimated 2014 costs and an under recovery of $958,251 as the estimated 2014 true-up amount for the Turkey Point Units 6 & 7 project.

APPROVED

Issue 14: What jurisdictional amounts should the Commission approve as reasonably projected 2015 costs for FPL's Turkey Point Units 6 & 7 project?
Recommendation: The Commission should approve $19,342,894 as FPL's reasonably projected 2015 costs for the Turkey Point Units 6 & 7 project.

APPROVED

Issue 17: What is the total jurisdictional amount to be included in establishing FPL's 2015 Capacity Cost Recovery Clause factor?
Recommendation: The Commission should approve a total jurisdictional amount of $14,287,862 as FPL's 2015 NCRC recovery amount. This amount should be used in establishing FPL's 2015 Capacity Cost Recovery Clause factor.

APPROVED

ATTACHMENT C

State of Florida

Public Service Commission

NEWS RELEASE

10/2/2014 **Contact: 850-413-6482**

PSC Credits $54 million to Duke Energy Customers

TALLAHASSEE — The three-member panel of the Florida Public Service Commission (PSC) today ordered that a credit be given to customers for $54 million dollars in equipment that was never received for the Levy Nuclear Project (LNP).

Commissioner Julie I. Brown stated "We need to pause here and reflect on what is fair, just and in the public interest. $3.45 per month may not seem like a lot to some people, but it means everything to Duke's customers. Customers shouldn't have to pay for something that was never delivered on."

The $3.45 a month was initially agreed to in order to recover remaining costs associated with the LNP project. Once the remaining costs are recovered, customers should expect that this charge will be removed from their bills. Because of this credit, the charge will now be removed much earlier than was anticipated under the prior Settlement Agreement.

"The Commission has the authority to order Duke to make this adjustment, and it is the right thing to do" said Commissioner Eduardo E. Balbis

Added Commissioner Ronald A. Brisé, "This adjustment is within the authority of the Commission and was contemplated in the most recent Duke settlement agreement. The Commission is cognizant of the impact of this decision on Duke's ratepayers who have carried a significant financial load without the benefit they thought they would receive. I believe that this result is fair and reasonable and that it adequately reflects the intentions of the Legislature when the NCRC was created."

DEF, Florida's second largest investor-owned utility, serves 1.7 million customers.

For more information visit the PSC website, at www.floridapsc.com.

Follow the PSC on Twitter, @floridapsc.

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ATTACHMENT D

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.
>
> ***

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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