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BEFORE THE
FLORIDA PUBLIC SERVICE COMMISSION

In the Matter of: DOCKET NO. 20200001-EI

Fuel and purchased power
cost recovery clause with
generating performance
incentive factor.
_____ /

PROCEEDINGS: COMMISSION CONFERENCE AGENDA
ITEM NO. 4A

COMMISSIONERS
PARTICIPATING: CHAIRMAN GARY F. CLARK
COMMISSIONER ART GRAHAM
COMMISSIONER JULIE I. BROWN
COMMISSIONER DONALD J. POLMANN
COMMISSIONER ANDREW GILES FAY

DATE: Tuesday, September 1, 2020

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

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

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

2 CHAIRMAN CLARK: All right. Next item is Item
3 No. 4A.

4 Before we ask Mr. Stiller to introduce the
5 item, just a couple of reminders before we begin
6 discussion.

7 No. 1, this is limited to Commissioners and
8 staff only for discussion.

9 I would like to also remind everyone of the
10 confidential nature of this particular item in the
11 docket. I am going to ask Ms. Helton if she would
12 carefully monitor the conversation if we move into
13 an area, there is an extensive or exhaustive list
14 of items that cannot be discussed, so I am going to
15 ask Ms. Helton, if she would, to monitor those
16 items and if we hear any discussion going in those
17 areas, please let me know so that we can redirect
18 and -- and start over on that particular item.

19 Okay. With that in mind, Mr. Stiller, would
20 you introduce the item, please?

21 MR. STILLER: Good morning, Chair and
22 Commissioners. This is Shaw Stiller of the Office
23 of General Counsel.

24 Agenda Item 4A is Commission consideration of
25 a recommended order issued by an Administrative Law

1 Judge of the Division of Administrative Hearings
2 following a formal evidentiary hearing in Docket
3 No. 20200001-EI. This docket is commonly referred
4 to as the Fuel Clause, and the specific matter
5 before this Commission involves a petition for cost
6 recovery filed by Duke Energy Florida.

7 In the petition, Duke requested recovery for
8 replacement power costs following a February 2017
9 forced outage at its Bartow Plant and the
10 subsequent derating of that plant.

11 The Office of Public Counsel, Florida
12 Industrial Power Users Group and White Springs
13 Agricultural Chemicals intervened in the docket.

14 Virtually all of the testimony and exhibits
15 filed by Duke and OPC regarding cost recovery for
16 the Bartow Plant outage and derating are
17 confidential. Recognizing that it cannot keep
18 these materials confidential and conduct a hearing
19 in the Sunshine, as required by law, this
20 Commission referred these two issues to the
21 Division of Administrative Hearings for assignment
22 of an Administrative Law Judge to conduct a closed
23 evidentiary hearing. The closed hearing was
24 conducted February 4th and 5th before
25 Administrative Law Judge Stevenson.

1 On April 27, 2020, the Administrative Law
2 Judge entered a recommended order recommending that
3 this Commission determine that the Bartow Plant
4 replacement power costs are not recoverable. The
5 judge made extensive findings of fact in support of
6 the ultimate conclusion that Duke did not prove by
7 a preponderance of the evidence that it acted as a
8 reasonable utility manner -- manager would have in
9 light of the conditions and circumstances that were
10 known or should have been known at the time in the
11 operation of its Bartow Unit 4, which resulted in
12 the unit's failure and the need for replacement
13 power.

14 Duke timely filed exceptions to certain
15 conclusions of law in the recommended order. Duke
16 did not file any exceptions to the findings of
17 fact.

18 This Commission may grant Duke's exceptions
19 and reject the subject conclusions of law if those
20 conclusions are within the substantive jurisdiction
21 of the Commission, and a different conclusion would
22 be as or more reasonable.

23 Staff has reviewed the exceptions filed by
24 Duke and does not believe that the company has met
25 the high burden for this Commission to grant them

1 and reverse the Administrative Law Judge.

2 Staff notes that Commission consideration of
3 the recommended order is affected by Duke's
4 decision to not contest any findings of fact.

5 By not filing exceptions to any of the 102
6 findings of fact in the recommended order, Duke has
7 accepted that these facts are supported by
8 competent, substantial evidence in the record.

9 Staff further notes that the conclusions of
10 law to which Duke takes exceptions are based on
11 those unchallenged findings.

12 In these circumstances, and on this record,
13 staff recommends that all exceptions be denied and
14 the recommended order be adopted.

15 Staff is available for questions.

16 CHAIRMAN CLARK: Thank you very much, Mr.
17 Stiller.

18 Commissioners, any questions for staff?

19 Commissioner Polmann.

20 COMMISSIONER POLMANN: Thank you, Mr.
21 Chairman.

22 I would like to make some comments, and we
23 will see if that leads into a question for staff.

24 I -- I am a little bit uncertain on a -- on a
25 particular point, but I would like to make some

1 introductory remarks, if I may, and I am prepared
2 to -- to move forward with the motion, but I would
3 like to get some guidance after I make some
4 introductory remarks, if I may proceed, Mr.
5 Chairman.

6 CHAIRMAN CLARK: Yes, sir.

7 COMMISSIONER POLMANN: Thank you. Thank you,
8 Mr. Chairman.

9 First, I want to thank the Commission for
10 allowing the extra time that I had requested to
11 review the information in this docket. It -- it
12 certainly is substantial, and it is complex. And I
13 believe of paramount importance here is our
14 deliberate care of this case.

15 Commissioners, I will preface my comments with
16 acknowledgment that certain aspects of the agenda
17 item before us engender strong positions and
18 perhaps emotions. So to be -- to be very clear, my
19 evaluation on this matter, my remarks on the record
20 derive from my focus on the record evidence, the
21 substance of the recommended order, and what I will
22 describe as an opportunity for this Commission to
23 fully discharge its duty. Simply saying, I see
24 our -- our duty here to accept, reject or modify
25 the ALJ recommended order. And as staff has noted,

1 the standard against reverting is finding of
2 conclusions that are more reasonable than, or as
3 reasonable as those provided in the recommended
4 order.

5 So, Mr. Chairman, at this time, I am -- I am
6 prepared to proceed on Issue 1, including a motion
7 supported on the basis, or we can run through the
8 basis or my rationale first, follow that up with a
9 motion. So whatever your pleasure is, we -- we can
10 kind of have a discussion or go right into a
11 motion. I will leave that to your pleasure, sir.

12 CHAIRMAN CLARK: Thank you -- thank you,
13 Commissioner Polmann.

14 Let's have -- let's have some discussion on
15 the item. And -- and I would just -- I had a
16 discussion with our General Counsel this morning
17 in -- in terms of if there are alternate
18 recommendations away from staff recommendation,
19 there are some considerations, I think, that the
20 staff and Commission would probably want in a final
21 order, and those things would certainly need to be
22 taken into consideration.

23 So I would like to -- if there is a motion
24 that is different from staff recommendation from
25 any of the Commissioners, I would like to take a

1 couple of minutes recess prior to that motion, give
2 our General Counsel some time to -- to work with us
3 on making sure that we get the things in the record
4 that are necessary, what the -- what the Commission
5 feels is necessary, what staff feels is necessary
6 to support our decision.

7 Mr. Hetrick, is that a fair statement?

8 MR. HETRICK: That's correct, Mr. Chair.

9 CHAIRMAN CLARK: Okay. Thank you.

10 Okay. Commissioners, other comments, and then
11 we will come back to Mr. Poulmann -- Commissioner
12 Polmann for a motion.

13 Commissioner Fay.

14 COMMISSIONER FAY: Thank you, Mr. Chairman.
15 My -- my comments will be brief.

16 I -- I agreed with Judge Stevenson and the
17 staff recommendation. I think Commissioner Polmann
18 was mentioning that, from his perspective, he might
19 be splitting out Issue 1 and Issue 2, which --
20 which may be appropriate. I just -- the one thing
21 I would like to add as it relates to Issue 2 is I
22 think the -- I mean, this is, as stated, an
23 extremely fact intensive case that was litigated
24 before Judge Stevenson, and a recommended order was
25 provided. It doesn't -- that order doesn't absolve

1 or extend liability beyond the facts that we have
2 in front of us here. So if something else were to
3 come up, it would likely go through the same
4 process. And due to the confidentiality of this
5 case, I will be mindful to speaking to any of the
6 specifics.

7 But I do think the language that has been
8 provided in the recommendation for Issue 2,
9 specifically the second paragraph in the staff
10 analysis, is important to -- to be recognized from
11 the order, and if approved -- if -- if that
12 position is approved, I would just want to make
13 sure that our legal folks recognize that in the
14 final order.

15 So those are my comments, Mr. Chair. Thank
16 you.

17 CHAIRMAN CLARK: Thank you, Commissioner Fay.
18 Any other Commissioners?

19 All right. Commissioner Polmann.

20 COMMISSIONER POLMANN: Thank you, Mr.
21 Chairman.

22 I would like to ask first for a clarification.
23 I believe Mr. Stiller introduced a particular
24 point, and I -- I note numerous references in the
25 material that's in this package to competence --

1 the phrase is something to the effect of competent,
2 substantial evidence in the record. And the
3 comments -- or the introductory remarks that I
4 heard speak to the findings of fact and -- and the
5 conclusions of law.

6 And I need to be absolutely clear here. I
7 recognize that the utility took no exceptions to
8 the findings of fact, and I need clarification on
9 whether this Commission has opportunity to take
10 into account the full evidentiary record, because I
11 see that phrase used numerous times in the
12 materials that is in this agenda package.

13 And are we to -- to avail ourselves of the
14 full evidentiary record, or are we to read this
15 agenda item on these pages only? And are we to --
16 to take action only on the hundred odd findings of
17 fact or -- or the conclusions of law, whatever the
18 number is, are we constrained by simply those
19 enumerated items, or are we examining all of the
20 material?

21 And I -- and I recognize the restrictions that
22 that we -- we have no opportunity to reweigh
23 evidence, or anything like that. I recognize that.
24 But what is it exactly that we are to avail
25 ourselves of? Can I get clarification on that,

1 please?

2 CHAIRMAN CLARK: Yes, Commissioner Polmann.

3 Mr. Stiller, would you -- would you address
4 that, please?

5 MR. STILLER: Yes, Mr. Chair.

6 Thank you, Commissioner.

7 The -- I want to give a general answer, and
8 then I will try to -- to get a little bit more
9 specific, Commissioner.

10 The general answer is the Commission does look
11 at the entire record. If looking at the entire
12 record, the specific finding of fact is unsupported
13 by any competent, substantial evidence anywhere in
14 that record, the action the Commission would then
15 take would be to reject that finding of fact.
16 Keeping in mind the Commission cannot replace it,
17 modify it or add another finding of fact. It would
18 just reject that finding of fact.

19 So that would be an examination of the entire
20 record on that for the competent, substantial
21 evidence. And on the conclusion of law which
22 stated the standard, that is the as or more
23 reasonable than the conclusion of law. But if the
24 findings of fact are not disturbed, and the
25 Commission is not rejecting them, then the factual

1 decision made today is based on those 102 findings.

2 CHAIRMAN CLARK: Okay. Thank you, Mr.

3 Stiller.

4 Commissioner Polmann.

5 COMMISSIONER POLMANN: Okay. I appreciate
6 that clarification.

7 I -- I do have, in fact, a series of comments
8 that -- that build to my position, and, in fact, I
9 do have an alternative recommendation -- a
10 recommendation that is an alternative to the staff
11 recommendation that -- that leads to a motion on --
12 on the issues, and I will take your direction, and
13 I -- and I -- I did hear that you would like to
14 take a brief recess. I am standing aside, Mr.
15 Chairman, waiting for your direction.

16 CHAIRMAN CLARK: Okay. Mr. Hetrick.

17 MR. HETRICK: Mr. Chairman, I think right now
18 we -- I need to understand, we need to understand
19 what Commissioner Polmann wants to do before we can
20 break, and -- and I think you need to entertain the
21 motion, perhaps let him explain what his rationale
22 is for the motion, as long as we stay within the
23 guidelines, and we can't discuss confidential
24 information. And at that point, if a motion is
25 made, I think you have to wait to see whether or

1 not if there is a second to it. If there is no
2 second to it, then it would not move forward. So
3 at that point, if there is a second I think that's
4 the appropriate time to break.

5 That's my advice.

6 CHAIRMAN CLARK: Okay. Commissioner Polmann.
7 That's a good starting point. If you want to throw
8 a couple of the items out, or a couple for
9 consideration what you would be interested in
10 doing, see if there is any Commissioners have
11 questions regarding it. If it looks like it has
12 merit, proceed with the motion; if not, your call.

13 COMMISSIONER POLMANN: Thank you, sir.

14 Fundamentally, my -- my intention is -- is to
15 deal with the entirety of Duke's exceptions, so --
16 so I will approach it in that fashion.

17 It is not my intention in -- in any sense
18 to -- to discuss the individual aspects, to go into
19 any detail, to speak to any of the confidential
20 matters at -- at a particular high level to try to
21 navigate a way through the confidential material.

22 So my question on the record evidence, and so
23 forth, has been addressed, and I will simply lay
24 out, to the best of my ability, a rationale as to
25 how I come to my position.

1 And, Mr. Chairman and Commissioners, I
2 appreciate your indulgence here, and I will -- I
3 will do the best I can hear to be brief.

4 Given the amount of confidential information,
5 and the fact that we are limited to what we can
6 talk about, I will express that there is a great
7 deal here behind my expressions. And as I said, I
8 will try to stay at the highest level, but please
9 recognize that silence in any particular regard is
10 not -- is not meant to imply that -- that I concur
11 any particular matter.

12 So what we have here is the recommended order.
13 And as I indicated, all the material that's in --
14 in the package before us, the inter-- the response
15 from the intervenors, material from the utility,
16 the recommendation from staff, I have familiarized
17 myself with all of that. And as indicated earlier,
18 I am -- I am looking at this -- our standard is
19 different conclusions of law, if -- if that is
20 something that we are pursuing, the standard being
21 as or more reasonable. My focus is on something
22 that is as reasonable. So that is the predicate I
23 am coming from.

24 The issue for me is a focus on the
25 confidential Attachment B to the recommendation,

1 and my -- my approach to this is an examination of
2 whether or not confidential Attachment B provides
3 the Commission with the necessary information to
4 reach a finding of whether the utility presents
5 adequate evidence or -- or adequate argument for
6 this Commission to -- to come to the point of
7 conclusions that are as reasonable.

8 So following review of the exceptions that
9 Duke has provided and the relevant materials
10 available to me, I will assert that Duke has, in
11 fact, provided sufficient information to come to
12 positions that are as reasonable as the recommended
13 order. Given the evidentiary record in full
14 consideration of foundational principles and
15 practices of sound utility industry standards, the
16 conclusion that finds in favor of Duke's exceptions
17 is as reasonable as accepting the recommended order
18 without modification.

19 So therefore, it is my position that the
20 exceptions to the conclusions of law that were put
21 forth and supported by the utility, providing
22 adequate basis for modifying the specific
23 conclusions of law 110 through 114 and 119 through
24 125, and that those are as reasonable as the ALJ's
25 conclusions of law, and therefore, I am prepared to

1 make a motion on that basis, Mr. Chairman, and I
2 can do so at this point --

3 CHAIRMAN CLARK: Okay. Based on that, Mr.
4 Hetrick, would there be any.

5 COMMISSIONER POLMANN: -- I can proceed.

6 CHAIRMAN CLARK: Based on -- on Commissioner
7 Polmann's analysis, what would you need? Would you
8 need anything specific?

9 MR. HETRICK: I think I understand clearly
10 what he would like to move, and I think we could
11 fashion that and send it around to the
12 Commissioners in a complete and thorough manner,
13 but again, first, I think the motion should be
14 made.

15 CHAIRMAN CLARK: Right. Understand. But I am
16 just making sure that we are -- we are clear you
17 can craft the argument.

18 MR. HETRICK: Yes, sir.

19 CHAIRMAN CLARK: Okay. All right. Other
20 Commissioner comments prior to Commissioner
21 Polmann's motion?

22 Commissioner Fay.

23 COMMISSIONER FAY: Thank you, Mr. Chairman. I
24 will -- I will be brief again.

25 Just in response to Commissioner Polmann's

1 comments and his motion, I -- I do think that a lot
2 of language in there from different parties about
3 not relitigating this, and essentially not making a
4 decision that has already been made. However, I do
5 agree with Commissioner Polmann. I think the legal
6 standard is clear for a conclusion of law, and I
7 think it states that it can be as or more
8 reasonable to base that decision on.

9 And so I just want to make sure, from my
10 perspective, that I am clear that acceptance of a
11 proposed order of the DOAH judge does not in itself
12 essentially mean that the Commission does not have
13 authority to make a determination that they deem as
14 reasonable for a conclusion of law. I actually
15 think it's the opposite. It's very clear that we
16 do have that authority to make that decision.

17 So with that, Mr. Chairman, those are my
18 comments on Commissioner Polmann's motion.

19 Thank you.

20 CHAIRMAN CLARK: Thank you, Commissioner Fay.

21 Okay. Commissioner Polmann, if you are ready
22 to make a motion, we will entertain it.

23 COMMISSIONER POLMANN: Thank you, Mr.

24 Chairman.

25 I believe I have laid out the basis for my

1 position. Hopefully my comments were clear on the
2 record, and with that, my motion, Mr. Chairman and
3 Commissioners, I move that this Commission find
4 that the information Duke Energy has provided in
5 Attachment B is sufficient to accept the position
6 that is as reasonable as the ALJ and, therefore,
7 approve DEF's exceptions to conclusions of law 110
8 through 114 and 119 through 125.

9 That's my motion.

10 CHAIRMAN CLARK: One second.

11 COMMISSIONER GRAHAM: I will second that
12 motion.

13 CHAIRMAN CLARK: Okay. I have a motion to
14 approve the --

15 COMMISSIONER POLMANN: I can repeat that.

16 CHAIRMAN CLARK: -- I have a motion and a
17 second to approve the exceptions that DEF laid out
18 in items 110 through 114 and 119 through 125.

19 Discussion on the motion?

20 Commissioner Brown.

21 COMMISSIONER BROWN: And I apologize. I am
22 having some spot -- spotty internet right now, so
23 my apologies. But, Commissioner Polmann, can you
24 kind of explain what the effect would therefore be
25 based on your motion?

1 COMMISSIONER POLMANN: Commissioner Brown --

2 COMMISSIONER BROWN: Yes.

3 COMMISSIONER POLMANN: -- I simply -- I simply
4 accept that DEF has provided sufficient information
5 in their material, and that I take in toto that all
6 of that material and all of their exceptions. I
7 believe we have that authority. I will leave it to
8 our legal staff to explain the effect.

9 I -- I am not taking a position on the effect.
10 I simply accept the entirety of -- of their
11 argument as presented in Attachment B as -- as
12 being sufficient that this Commission can -- can
13 take a position that the alternative conclusions
14 are as reasonable as the ALJ's recommended order.
15 I -- I am not going to opine on the consequence,
16 other than to say that I believe, as I stated.

17 COMMISSIONER BROWN: Shaw?

18 CHAIRMAN CLARK: Mr. Stiller.

19 MR. STILLER: Yes -- yes, Mr. Chair, this is
20 Shaw Stiller again.

21 If the Commission is to -- chooses to reject
22 conclusions of law, Chapter 120 requires that there
23 be substituted conclusions of law that are as or
24 more reasonable. The effect of this motion I
25 suggest would be defined by what those substituted

1 conclusions are.

2 CHAIRMAN CLARK: So, Mr. Stiller, you are --

3 COMMISSIONER BROWN: Thank you. I just wanted
4 that clarification for the record.

5 CHAIRMAN CLARK: So you are saying that if we
6 accept Commissioner Polmann's motion, we are going
7 to have to go back and apply new conclusions of
8 law?

9 MR. STILLER: That is -- Mr. Chair, that is
10 correct. The conclusions of law in the recommended
11 order would be stricken. There would be
12 substituted conclusions of law, and there would be
13 specific findings as to why those substituted
14 conclusions are as or more reasonable.

15 CHAIRMAN CLARK: And by default, are we then
16 denying the recommended order by the ALJ?

17 MR. HETRICK: Yes.

18 MR. STILLER: Thank you, Mr. Chair. If I
19 understand correctly, the cost that would be -- the
20 costs would be recoverable, and the petition would
21 be granted.

22 CHAIRMAN CLARK: Okay. So by accepting the
23 motion by, it, by default, rejects the ALJ order
24 and allows for the recovery. Okay, I just wanted
25 to make sure is that was clarified.

1 Commissioner Polmann.

2 COMMISSIONER POLMANN: Mr. Chairman, I -- I
3 believe Issue 2 deals with additional subject
4 matter. I think Issue 1 speaks, in the staff
5 layout of this agenda item, deals with the
6 exceptions to the conclusions of law. There is
7 another issue before us. So I appreciate Mr.
8 Stiller's comments, but I think there are separate
9 issues here. I don't -- that's just my comment,
10 sir.

11 CHAIRMAN CLARK: Right. So my question to Mr.
12 Hetrick is could you adopt Commissioner Polmann's
13 motion and, at the same time, approve the
14 recommended order? They are two separate things,
15 and in fact, it is automatically denying the
16 recommended order; is that correct?

17 MR. HETRICK: That's correct. I don't know
18 how you split the two apart. I mean --

19 CHAIRMAN CLARK: So we would have to, at that
20 point in time, craft a new order to adopt, and that
21 would basically push the decision out. If we
22 accept Issue 1, Commissioner Polmann's
23 recommendation, we can't make a decision today on
24 the final recommended order; is that correct?

25 MR. HETRICK: No. I think you can make the

1 decision on the recommended order, just as you can
2 reverse staff's recommendation on Issue 1, you can
3 reverse staff's recommendation on Issue 2, but
4 Issue 2 is intricately tied to Issue 1. So it's
5 one of those situations where once you decide to
6 overrule all the exceptions, you have effectively
7 overruled the recommended order. So there is no
8 other option with respect to Issue 2, and I want to
9 be clear about that.

10 CHAIRMAN CLARK: So at that point, staff would
11 draft a final order for the Commission to approve,
12 but -- I guess I am concerned or confused about
13 what that final order would look like and --

14 MR. HETRICK: So that -- I think that's part
15 of what, Mr. Chair, we said we would craft. Now
16 that we have a second, we -- we have something that
17 we are prepared to offer up to the Commission to
18 sort of -- to completely reflect, I think, what
19 Commissioner Polmann's intent is. And I can read
20 it to you and then we can take a break and email it
21 to all the Commissioners if you would like, have
22 them look at it so that they have it before them,
23 so they can decide whether or not they want to --
24 what their vote will be on this.

25 CHAIRMAN CLARK: Okay. Great point.

1 Commissioner Polmann.

2 COMMISSIONER POLMANN: Thank you, Mr.
3 Chairman.

4 As I understood it, our duty was to accept, or
5 reject, or modify. And what -- what is being
6 discussed here, based on my motion on Issue 1, is a
7 rejection of the order. And I have a motion on
8 Issue 2, which is to modify the order. And -- and
9 I thought that was the question before us, is -- is
10 accept, reject or modify.

11 CHAIRMAN CLARK: That is correct.

12 COMMISSIONER POLMANN: I will leave it --
13 leave it to the General Counsel's Office as to what
14 they do with the order. I am not writing our
15 order. And -- and I understood that to be the case
16 during the entire term of my sitting in this chair,
17 but I am -- I am happy to take all of the issues in
18 this agenda item all together and -- and I am
19 prepared to make a motion on Issue 2 to clarify the
20 discussion that is -- that is now -- (inaudible) --
21 here.

22 CHAIRMAN CLARK: I think -- I think we are on
23 the same page in terms of the discussion --
24 somebody needs to mute their phone, please.

25 COMMISSIONER POLMANN: Maybe -- maybe that has

1 something to do, but pardon -- pardon me, sir.

2 CHAIRMAN CLARK: So -- so I think we are on
3 the same page there, and it is my -- you are -- you
4 would be modifying the final order. We would have
5 to come back, if this is accepted, and have an
6 additional motion.

7 But I think the point, Commissioner Polmann,
8 is that we don't write the final order, but the
9 motion that we make has a lot of impact on what
10 that final order looks like. And I think legal
11 staff has requested that if we are going to do a
12 modification, that they would want some very
13 specific language from the Commission in the motion
14 in order to craft a final order that they feel
15 comfortable with. So I just -- I just want to make
16 certain that we are --

17 COMMISSIONER POLMANN: Of course.

18 CHAIRMAN CLARK: -- getting all the things in
19 a row. It's no -- no reflection on what you are
20 trying to do, just procedural more than anything.

21 Commissioner Brown, you are recognized.

22 COMMISSIONER BROWN: Thank you.

23 And again, this is a question for Keith or
24 Shaw. The conclusions of law are based on the
25 conclusions -- the findings of fact, Commissioner

1 Polmann, right?

2 MR. HETRICK: Correct.

3 COMMISSIONER BROWN: Which -- which Duke did
4 not take exception to the findings of fact. So I
5 just have some consternation with the concept,
6 Commissioner Polmann, that you are proposing, quite
7 frankly.

8 CHAIRMAN CLARK: Okay. Other discussion or
9 questions?

10 Okay. Are we ready to vote on Commissioner
11 Polmann's motion?

12 All those in favor, please say aye.

13 COMMISSIONER GRAHAM: Aye.

14 COMMISSIONER POLMANN: Aye.

15 CHAIRMAN CLARK: All those opposed, nay?

16 COMMISSIONER BROWN: Nay.

17 COMMISSIONER FAY: Nay.

18 CHAIRMAN CLARK: Nay.

19 The motion fails 3 to 2.

20 The floor is open for a new motion.

21 Commissioner Fay.

22 COMMISSIONER FAY: Mr. Chairman, yeah, I would
23 move staff recommendation on all issues, and direct
24 legal to incorporate the language that is placed in
25 staff analysis paragraph two under Issue 2 into

1 the -- the final order.

2 COMMISSIONER BROWN: Second.

3 CHAIRMAN CLARK: I have a motion and a second.

4 Now discussion. Any discussion?

5 On the motion, all in favor say aye.

6 COMMISSIONER BROWN: Aye.

7 COMMISSIONER FAY: Aye.

8 CHAIRMAN CLARK: Opposed?

9 COMMISSIONER POLMANN: No.

10 CHAIRMAN CLARK: Commissioner Graham?

11 COMMISSIONER GRAHAM: I was affirmative.

12 CHAIRMAN CLARK: Affirmative, okay.

13 Motion passes on a 4 to 1 vote.

14 All right. Thank you very much.

15 (Agenda item concluded.)

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CERTIFICATE OF REPORTER

STATE OF FLORIDA)
COUNTY OF LEON)

I, DEBRA KRICK, Court 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 11th day of September, 2020.



DEBRA R. KRICK
NOTARY PUBLIC
COMMISSION #HH31926
EXPIRES AUGUST 13, 2024